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ABBREVIATIONS EXPLAINED

Reports.

I.L.R. (1938) All.	Indian Law Reports, Allahabad Series.
A.L J	Allahabad Law Journal.
A.L R.	Allahabad Law Reports.
A.W.R.	Allahabad Weekly Reporter.
A. Cr C.	Allahabad Criminal Cases.
A I.R 1938 All. or 1938 A.	All India Reporter, 1938 Allahabad.
A.M.L J	Ajmer-Merwara Law Journal.
I L R (1938) Bom.	Indian Law Reports, Bombay Series
Bom. L. R.	Bombay Law Reporter
A. I R. 1938 Bom. or 1938 Bom.	All India Reporter, 1938 Bombay.
Bur. L T	Burma Law Times.
Bur. L J.	Burma Law Journal.
B R	Bihar Reports.
I L R. (1938) 1 & 2 Cal.	Indian Law Reports, Calcutta Series.
C. L. J.	Calcutta Law Journal.
Cr. L. J.	Criminal Law Journal.
C. W. N.	Calcutta Weekly Notes.
A. I. R 1938 Cal. or 1938 Cal.	All India Reporter, 1938 Calcutta.
A. I. R. 1938 F C.	All India Reporter, 1938 Federal Court
I. A.	Law Reports, Indian Appeals.
A. I R. 1938 P C.	All India Reporter, 1938 Privy Council.
I. C.	Indian Cases.
R. P. C.; R. A., R B; R. C.; R. L., R M.; R. N; R O, R. P.; R. R.; R. S.	Indian Rulings, Privy Council, All, Bom, Cal, Lah., Mad., Nag.. Oudh, Pat, etc.
I L. R (1938) Lah.	Indian Law Reports, Lahore Series
A. I R. 1938 Lah or 1938 Lah	All India Reporter, 1938 Lahore.
Lah L. T. or L. L T	Lahore Law Times.
L. B. R	Lower Burma Rulings.
L. W.	Law Weekly.
Luck	Indian Law Reports. Lucknow Series.
I L R (1938) Mad	Indian Law Reports, Madras Series.
(1938) M. L. J.	Madras Law Journal.
M. L T.	Madras Law Times.
M W. N	Madras Weekly Notes.
A. I. R 1938 Mad or 1938 Mad	All India Reporter, 1938 Madras.
Mys. H. C. R.	Mysore High Court Reports
Mys. L J.	Mysore Law Journal.
I L R (1938) Nag.	Indian Law Reports, Nagpur Series.
N. L. J.	Nagpur Law Journal.
N L. R.	Nagpur Law Reports.
A I. R. 1938 Nag. or 1938 Nag	All India Reporter, 1938 Nagpur.
O. C.	Oudh Cases
A I. R. 1938 Oudh or 1938 Oudh	All India Reporter, 1938 Oudh.
O A.	Oudh Appeals
O. L J.	Oudh Law Journal.
O.L.R.	Oudh Law Reports.
O. W. N.	Oudh Weekly Notes.
P. R.	Punjab Record
P. L. R.	Punjab Law Reporter.
P. W. R.	Punjab Weekly Reporter.
Pat. or P.	Indian Law Reports, Patna Series.
P. H. C. C.	Patna Supplement to C W. Notes.
A. I. R 1938 Pat. or 1938 Pat.	All India Reporter, 1938 Patna.
Pat. L. J.	Patna Law Journal
Pat. L. T.	Patna Law Times.
P. W.N.	Patna Weekly Notes.
A. I. R. 1938 Pesh.	All India Reporter, 1938 Peshawar.
R. or Rang.	Indian Law Reports, Rangoon Series
1938 Rang. L R.	Rangoon Law Reports.
A. I R 1938 Rang or 1938 Rang.	All India Reporter, 1938 Rangoon.
R D.	Revenue Decisions.
S. L. R.	Sind Law Reporter.
A. I. R 1938 Sind or 1938 Sind	All India Reporter, 1938 Sind.
T. L. R.	Travancore Law Reports.
T. L J.	Travancore Law Journal.
T. L. T.	Travancore Law Times.
U B. R.	Upper Burma Rulings
Co.L.J.	Cochin Law Journal.

Other Abbreviations.

Appl.	Applied.	Disc.	Discussed.	P. C.	Privy Council
Appr.	Approved	Diss.	Dissented from.	Ref or R.	Referred.
Comm.	Commented.	Doubt	Doubted	Rel.	Relied.
Cons.	Considered	Expl.	Explained.	Rev.	Revenue
Cr.	Criminal.	Foll.	Followed.	S. B.	Special Bench.
Dist or D	Distinguished.	F. B.	Full Bench.		

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——176=8 C.W.N. 786 Ref. 42 C.W.N. 913.
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32 I A 1=32 Cal. 198 Dist. I.L. R. (1938) 2 Cal. 243.
——23=32 Cal. 296 (P.C.) Dist. (1938) 2 M.L.J. 482.
——93 Ref. I.L.R (1938) 1 Cal. 400.
——113=27 All. 271=15 M. L J. 197 (P C.) Ref. (1938) 1 M L.J. 610.
——193=33 Cal. 180 (P.C.) Rel. 42 C.W.N. 371; Dist. I.L R. (1938) 1 Cal. 354; Foll. I.L.R. (1938) 1 Cal. 531; 42 C W.N. 422.
——203=27 All 634 Rel 1938 O.W.N. 268; (1938) 1 M.L.

J 686, Ref 65 I.A. 139; I. L.R (1938) 1 Cal. 626 Dist. (1938) 1 M.L.J 731.

33 I.A 193 Dist. (1938) 2 M.L.J. 972.

34 I.A. 87 Ref. 40 P.L.R. 35.
——87=34 Cal 329 Ref I.L. R. 1938 Bom. 292=40 Bom L.R. 394
——115=31 Bom. 381 (P C) =17 M.L.J 347 Rel. (1938) 1 M L.J. 50. Dist. (1938) 2 M L J. 740.
——138=11 C W.N. 817 (P. C) Ref 42 C.W.N. 497.

35 I.A. 1=30 All. 1=17 M L.J. 605 (P C.) Disc. (1938) 1 M L.J 2'8.
——48=35 Cal 420=18 M.L. J 100 (P C) Ref. (1938) 1 M.L.J. 610.
——73 Rel on I.L.R. (1938) 1 Cal. 206.
——98 Rel. (1938) 2 M L.J. 817.
——130=12 C W.N. 825 Cons. & Rel 42 C.W N. 161.
——189=12 C W N. 1017. Ref. 42 C.W.N. 1219.
——195 Ref. (1938) 2 M.L J. 434.

36 I.A. 168=31 All 572 (P C.) Ref. 17 Pat. 236.
——192 Ref 1938 Rang L.R. 323.

37 I.A. 147=14 C W.N. 889 Rel. 42 C.W.N 469.
——152=32 All 410 Ref 1938 A L.J. 66, 42 C. W. N. 1212.

38 I.A. 31 Ref. (1938) 2 M.L J 410
——45=21 M L J. 378=33 All. 272 (P.C.) Foll. (1938) 1 M L J 526
——87 Ref. (1938) 2 M.L.J 44
——129=34 Mad. 257=15 C. W N 741 Ref. 42 C.W.N. 422 Rel 42 C W N. 371.

39 I.A. 1 Foll. (1938) 2 M L J. 277.
——7=34 All 63=16 C W.N 97 Dist. 17 Pat. 499, Ref I L R. (193?) 1 Cal. 21, 42 C. W N. 1212
——49 Ref. & Dist. 19 P.L.T. 35.
——68 Foll. 1938 Rang L R. 430, Dist. 17 Pat. 180.
——156=14 Bom L R 1055 Ref. 40 Bom. L R 132
——197=40 Cal 21 Ref. 42 C. W.N. 391=I.L.R. (1938) 2 Cal. 103.

40 I.A 31 Cons. 1938 Rang L.R. 293, Ref 13 Luck. 270
——37=40 Cal. 274 (P.C.) Ref. (1938) 2 M L J 623.
——40=35 All. 80 cited I.L.R. (1938) 1 Cal. 369

40 I.A. 56=40 Cal 598 (P.C)= 25 M.L J 104, Rel. (1938) 1 M L.J. 829.
——132=35 Mad 295=25 M L J. 150 (P C.) Ref & Expl. (1938) 1 M.L J. 775.
——223 Ref. (1938) 2 M.L.J. 490.

41 I.A. 23 Foll. 1938 O.W.N. 97. Reaffirmed 42 C.W.N. 332. Rel. 40 Bom.L.R. 697; 1938 A.L.J. 17[illegible]
——25=42 [illegible] M L J. [illegible] M L.J. 7[illegible]
——91=18 [illegible] 42 C.W[illegible] R. (1938[illegible]
——104=18 [illegible] 42 C.W.[illegible]
——110=18 [illegible] 42 C.W [illegible]
——142 Dist [illegible] 521.
——149=41 [illegible] L.R. (1938) 2 Cal 295 Ref. =65 I.A. 158. (1938) 1 M. L.J. 647.
——251=27 M.L.J. 150=42 Cal. 72 (P.C) Rel. (1938) 1 M L.J. 471. Dist. (1938) 2 M.L. J. 482.
——290=42 Cal. 384 Rel. 1938 A.L J. 670.

42 I.A. 1=42 Cal. 801 (P C)Ref. 42 C.W.N. 38. Rel. I.L.R. (1938) 1 Cal. 607.
——64 Ref. I.L R. (1938) 2 Cal. 492.
——88=42 Cal. 776 Rel. I.L.R 1938 Bom. 273.
——177=29 M L J. 329=37 All 545 (P C.) Ref. (1938) 1 M.L.J. 574.
——202=37 All 557 Ref. 17 Pat. 223. I.L.R. (1938) 1 Cal. 1.
——229 Ref. (1938) 2 M.L.J. 434

43 I.A. 6=20 C.W.N. 105=43 Cal 493 Ref 65 I.A. 66= I.L R (1938) 2 Cal. 72= 42 C.W.N. 985, 1938 A.L. J. 169=19 P.L T. 125= (1938) 1 M.L.J. 640 Foll. 40 Bom.L.R. 746.
——104 Foll. 40 Bom.L R. 371.
——113=20 C.W N. 833 (P. C.) Ref. (1938) 1 M L.J. 334 (F.B).
——1?2 Ref. (1938) 2 M.L.J. 534, 1938 Rang L.R. 316
——138=39 Mad 609 Ref. 42 C.W N. 38. Rel. I.L.R. (1938) 1 Cal. 607.
——151 Rel. I.L.R. (1938) 1 Cal. 369.
——207=39 Mad 634 Ref. I. L.R. (1938) Bom. 292=40 Bom.L R. 394.

43 I A. 249=44 Cal 186 Ref. 42 C W N 837, 40 Bom.L.R. 1029=(1938) 1 M.L J. 113.
——256 Ref. 1938 Rang.L.R. 190
——269=38 All 552=31 M. L J. 804 Ref. 65 I.A 139= 13 Luck. 646=1938 A.L.J. 301=(1938) 1 M. L J. 731 (P C.)=(1938) 2 M. L. J. 912, Rel. 1938 O W.N. 268.
——[illegible]
——72=19 Bom L R. 424 Ref. 40 Bom L R 371.
——98=32 M.L.J. 369=40 Mad. 402 (P.C.) Ref. (1938) 1 M.L.J. 113.
——117=44 Cal. 841 Foll. 17 Pat. 315.
——126 Ref. (1938) 2 M.L.J. 461.
——147 Ref. 19 P.L.T. 35.
——159=39 All 496 Mentioned I.L.R (1938) 1 Cal 369; Ref. (1938) 2 M.L.J. 704.
——166=33 M.L J. 144=40 Mad 886 (P C) Ref. (1938) 1 M.L.J. 519, Rel. (1938) 2 M.L.J. 452. Foll. (1938) 2 M.L J 244.
——218 Dist. 1938 O.W.N. 360, Ref. 19 P.L.T. 309.
——236 Ref. (1938) 2 M.L.J. 189
——261=33 M L J. 69=40 Mad. 793 (P.C.) Ref. (1938) 1 M L.J. 715.

45 I.A. 1 Ref (1938) 2 M.L.J. 623.
——25 Ref. 19 P.L.T. 309.
——111 Dist. 13 Luck. 159.
——134 Ref. 13 Luck. 470.
——148=20 Bom L R. 1056 Foll. 40 Bom L R. 960.
——168 Cons. (1938) 2 M.L J. 852=23 C.W.N. 328 Ref. 42 C.W.N 1237.
——251 Ref. 19 P L.T. 246.

46 I A. 1=23 C.W.N 521 Ref. 42 C W.N. 497.
——15 Ref 19 P.L.T. 309.
——33=46 Cal. 663=36 M.L. J 312 Ref. (1938) 1 M.L. J. 378.
——72=42 Mad. 523 Rel. 42 C.W N. 174, 40 Bom L. 876, Dist. 13 Luck.

1938 O.W.N. 152, Disc. (1938) 1 M L.J 298, Ref. 40 Bom L.R. 394=I.L R. 1938 Bom. 723
46 I A. 135=41 All. 566=23 C. W.N 697 Ref. 42 C W.N 610; I L R. (1938) 1 Cal. 121.
——228=42 All 158 Rel I.L. R 1938 Mad. 460=(1938) 1 M L J 159.
——240=47 Cal 485=37 M. L J 525 Ref 42 C.W.N 97, 42 C.W N. 107, (1938) 1 M L J. 325 Rel I L R. (1938) 1 Cal 563
——259=47 Cal 466 Ref I.L. R 1938 Bom. 723, Rel 40 Bom L.R. 876.
——285=22 Bom L R 444 Dist 40 Bom L R. 202; Ref. (1938) 2 M.L J. 534.
——294=23 C W.N 490 Ref. 42 C.W.N 47.
——663 Ref. (1938) 2 M L.J. 189.
47 I A 1=43 Mad. 546 Rel. 40 Bom.L R 132, 42 C.W.N 14
——6=43 Mad 541=38 M L. J 393 (P.C) Appl (1938) 1 M.L J 154; Foll (1938) 1 M L J 157, Ref. (1938) 1 M.L J 113
——11 Rel 17 Pat. 180.
——17=44 Bom. 670 Dist 40 Bom.L.R 1; (1938) 1 M.L. J. 545, Ref. I.L.R. 1938 Mad 91, 42 C W N. 8.
——88 Rel 42 C W N. 154
——121 Ref. 1938 Rang L.R. 330.
——207=25 C W.N 241 Ref. 42 C.W.N. 721.
——233=48 Cal. 100 Ref. I.L. R 1938 Bom 723=40 Bom. L.R. 876, Rel. 42 C.W.N. 174.
48 I A. 12 Ref. 65 I.A. 198=1938 A.L.J. 825=1938 O. W.N. 693, (1938) 2 M L.J. 1=I.L.R. 1938 Lah. 383; 42 C W.N. 845=40 Bom.L. R. 835.
——39 Dist. I.L R. (1938) 2 Cal 1.
——50 Dist. (1938) 2 M.L.J. 85.
——244=44 Mad. 043 (P.C.) Ref. (1938) 1 M.L J. 552.
——280=44 Mad. 650 Ref. I. L.R. (1938) 1 Cal. 652=42 C.W.N. 77.
——302=44 Mad. 831 Foll. (1938) 1 M L.J. 113; Ref. (1938) 1 M.L.J. 763; I.L. R. 1938 Bom. 184; I.L.R (1938) 1 Cal. 652.
——335=20 C.W.N. 858 Ref. 42 C.W.N. 698.
48 I.A. 349=26 C.W.N 159 Ref. I.L.R 1938 Mad. 551; Appl. 65 I.A. 93, Expl 40 Bom.L. R. 704; 42 C.W.N. 449, 1938 A L J. 215, (1938) 1 M.L.J. 426.
——395=44 Mad. 883 (P.C.) Rel (1938) 1 M.L J 190.
——465=26 C.W.N. 279 Ref. 42 C.W.N. 721.
——499=26 C W N. 465 Ref. 42 C W N 913.
——513=49 Cal. 1 Ref. I.L.R. 1938 Bom. 84.
——539=44 Mad 740 Ref. (1938) 2 M L.J. 756.
49 I A 37 Disc. 17 Pat. 350, Ref. I L.R. (1938) 1 Cal. 652.
——54=42 M L.J. 501=46 Bom 481 (P C.) Rel. (1938) 1 M.L J. 113.
——60 Dist. 13 Luck. 357.
——100 Ref (1938) 2 M.L.J. 623.
——144=3 Lah. 127 Ref. 17 Pat. 252.
——181 Cons (1938) 2 M.L.J. 287.
——276 Foll. 13 Luck. 697.
——286=45 Mad. 586 (P.C.) Disc. (1938) 1 M.L.J. 634.
——307=27 C W.N 156 Ref. 42 C.W.N. 72.
——331 Expl. I.L.R. (1938) 1 Cal. 231.
——351 Ref. 1938 O.W.N. 722.
——358 Ref. 19 P.L.T. 281; Rel. 40 Bom L R. 1068; 42 C.W.N. 1021; 1938 A L.J. 763.
50 I.A. 69 Dist 13 Luck. 697.
——77=50 Cal 338 (P.C.) Ref. (1938) 1 M.L.J. 582=I.L R. (1938) 1 Cal. 182, Rel. 19 P.L.T. 489
——84 Ref. 19 P L.T. 489.
——92 Ref. I L.R. 1938 Bom. 184
——134=44 M L.J. 745=46 Mad. 373 (P C.) Expl. (1938) 1 M.L J. 216
——162=4 Lah 284 (P C.) Ref. (1938) 1 M L J. 829.
——183 Ref. 13 Luck. 255.
——192=4 Lah. 350=45 M L J. 355 (P C) Dist. (1938) 1 M.L.J. 574, Ref. (1938) 2 M.L.J 104.
——202=45 All 419=45 M L J. 623 (P.C) Cons. (1938) 1 M.L.J. 391.
——227=47 Bom. 742 Rel I. L.R. (1938) 1 Cal. 476=42 C.W.N. 230
——239 Foll. 1938 O.W.N. 152.
——255=25 Bom L R. 1005 Foll. 40 Bom.L.R. 439, Ref. I.L R. 1938 Bom. 465.
50 I.A. 295=46 Mad. 751=45 M. L J. 88 (P.C.) Appl. (1938) 1 M.L.J. 113.
——324 Ref. (1938) 2 M.L.J. 22
51 I.A. 24 Ref. (1938) 2 M.L.J. 802.
——83=47 Mad. 337=46 M. L J. 46 (P.C.) Foll. (1938) 1 M.L.J. 634.
——101=26 Bom.L.R 595=46 M L J. 610=3 Pat. 279 Foll. 40 Bom.L R. 132, Rel. (1938) 1 M.L.J. 676.
——129=26 Bom L R. 500; Ref 40 Bom.L.R. 947=(1938) 2 M.L.J. 461.
——140 Foll. 1938 Rang L.R. 430=17 Pat 154.
——190=54 Cal. 595=52 M. L J. 734 (P C) Ref. (1938) 1 M.L.J. 413
——257 Ref. (1938) 2 M L.J. 434.
——305 Ref. 13 Luck. 680.
52 I.A. 1 Ref. 1938 Rang.L.R. 480.
——61 Ref. (1938) 2 M.L.J. 165
——83=27 Bom L R 735 Foll. 40 Bom L.R. 202, Ref. (1938) 2 M.L.J. 704; Expl. 17 Pat. 430.
——100=29 C.W.N. 749 Ref. 42 C W.N. 110, 42 C.W. N. 560; Dist. 13 Luck. 323.
——160=30 C.W N 1 Ref. 42 C.W.N. 913, 42 C.W.N. 1030.
——245=52 Cal. 809=49 M. L J 30 (P C) Dist. (1938) 1 M.L J. 193
——262=47 All 385=49 M L J 244 (P C) Ref. (1938) 1 M.L J. 686.
——322=30 C W.N. 313 Ref. 42 C.W.N. 1237; Cons. (1938) 2 M.L J 852
——342 Foll. 1938 O.W.N. 97; Re-affirmed 42 C.W.N 332, Ref. 1938 O.W N. 531, Rel 1938 A L.J. 176; 40 Bom. L.R. 697.
——385=49 M L J. 282=3 Rang 494 (P C.) Rel. (1938) 1 M L J 519 Dist. (1938) 1 M L J. 17
53 I A. 6 Rel. 1938 A L J 169.
——24=5 Pat 312 Rel I.L. R. 1938 Bom 155=40 Bom L R. 147.
——36=28 Bom L R 851 Dist. 40 Bom L.R. 1029, Quaere 40 Bom L R. 521.
——187=48 All 457 (P.C.) Ref. (1938) 2 M L J 251.
54 I.A. 33 Rel. 1938 A L J. 825; Ref. 65 I.A. 198=42 C.W. N. 845=(1938) 2 M L.J. 1=1938 O.W N. 698 (P.C.)=I.L.R 1938 Lah. 383=40 Bom.L.R. 835.

54 I.A 68 Ref. 13 Luck. 215.
——79 Dist. 13 Luck. 230.
——89=29 Bom L.R 833 Foll. 40 Bom L.R. 428
——96 Ref. 65 I.A. 158=I.L.R (1938) 2 Cal. 295=42 C.W. N. 621=1938 A.L.J. 352=40 Bom L.R. 787, (1938) 1 M.L.J. 647.
——122=29 Bom.L.R 848 Ref. 40 Bom.L R. 1005
——178 Disc. 19 P L T 555
——238 Dist (1938) 1 M L.J 193
——248=29 Bom.L.R 969 Foll 40 Bom L.R. 443
——272=32 C W N 1 Dist 13 Luck 340, Ref 42 C W. N 437 Foll 1938 O W.N 360
——338=32 C W.N. 61 Ref 42 C W N 1059 1938 A L J 894 (1938) 2 M L J 44
——396 Dist 1938 O W N 152
——421=32 C W N 237 Ref. (1938) 2 M L J 44, 42 C. W N 38
55 I.A. 7 Rel I.L.R. 1938 Mad. 52, Foll. 13 Luck. 659.
——81=32 C.W N. 629 Ref. 42 C.W.N. 718.
——161 Ref. 42 C.W.N. 72, Rel. (1938) 2 M L.J 283.
——227 Foll. 1938 Rang L.R 355
——256=51 Mad 349 Ref. 17 Pat 446
——360=52 Bom 597=32 C W N 953 Ref. 42 C W N 97, Rel. I L.R. (1938) 1 Cal 563.
56 I.A. 1=51 All 182=33 C.W. N. 242 Ref I L R (1938) I Cal 665=42 C.W.N. 1121
——51=53 Bom 230 (P C.) Ref (1938) 2 M L.J 490.
——182=31 Bom L R. 816 Cons I L R 1938 Bom 1, Ref & Foll (1938) 2 M L J 822.
——192=51 All 367 Appl. (1938) 1 M.L.J 101.
——232=10 Lah. 737=57 M L J. 281 Expl. & Dist. I.L. R. 1938 Mad 598=(1938) 1 M.L.J. 628
——267=33 C W.N. 809 Ref. 42 C.W N 1237; Cons (1938) 2 M.L J 852
57 I A 21=54 Bom. 213 Dist 42 C.W N 194, Ref. 65 I.A. 1=1938 A.L J 46=I.L R. 1938 Bom. 239 (P C.)=(1938) 1 M L J 1.
——24=34 C.W.N. 201 Ref. 42 C.W N. 793=I L.R. (1938) 2 Cal 418.
——86=59 M L J. 53=11 Lah. 199 Foll. (P C) 1938 O.W.N. 706, Ref. 1938 O. W.N. 744, (1938) 1 M.L.J. 487.
57 I A. 100 Expl. & Dist. I.L.R. 1938 Mad. 479.
——110 Ref. I L.R (1938) 1 Cal 21
——125=57 Cal 1293=34 C. W.N. 462 Ref. 42 C W.N. 445, (1938) 2 M L J 434, Rel (1938) 1 M.L J 113
——189=34 C.W N 661 Ref. 42 C W N. 1004.
——214=58 Cal 301=34 C W.N 821 Ref 42 C.W.N. 701, Foll. I L.R (1938) 2 Cal 266.
——325=11 Lah 657=59 M. L J 621 (P C) Ref. (1938) 1 M L.J 334 (F B)
——333=58 Cal 692=35 C W.N 93 Ref 42 C.W N. 97 Rel I L R (1938) 1 Cal 563
58 I A. 68=54 Mad. 257 Ref. I. L.R. (1938) 1 Cal. 187.
——91=58 Cal. 1235=35 C. W.N. 550 Dist 1938 Rang L.R. 430, Ref. 42 C.W N. 38 42 C.W.N. 630, Rel 19 P L.T. 489
——115=33 Bom L.R. 867 Foll. 40 Bom.L.R. 884
——125 *Ref. (1938) 2 M.L.J 434.*
——158 Ref (1938) 2 M.L.J. 775.
——169 Ref. (1938) 2 M.L.J. 863
——173 Ref. (1938) 2 M.L.J. 756.
——215=59 Cal. 1=61 M L J 208 (P.C) Rel (1938) 1 M L.J. 686
——220 Foll 40 Bom L.R. 202, Rel I L.R. (1938) 1 Cal. 369.
——254=10 Pat 654=61 M. L J 489 Rel 1938 O.W N. 429, (1938) 1 M.L.J. 50.
——279=35 C W N. 953 Ref 42 C.W.N 1131.
——372=59 Cal. 576=61 M. L J 442 Appl. 65 I.A. 93=(1938) 1 M L J 232; Foll (1938) 1 M.L.J. 426, Expl. 1938 A L J 215, 40 Bom L R 704, 42 C.W N. 449, Ref I L.R 1938 Mad. 551.
——402=33 Bom L R. 1526 Ref 40 Bom L.R. 937.
59 I.A. 1=6 Luck 556 Ref 1938 A.L.J. 843; 40 Bom.L R. 843; 42 C.W N. 901; 13 Luck. 494.
——56=55 Mad 268=62 M. L J. 213 Mentioned (1938) 1 M L.J. 519.
——130 Appl. 1938 O.W.N. 454.
59 I.A 161 Rel. 1938 A L.J. 585; Ref I L R. 1938 All. 563 (F.B.).
——206=36 C W N. 653=63 M.L J. 124 I L.R 1938 Bom. 752, 40 Bom. L. R. 916, 42 C.W N. 1070; I L R 1938 Mad. 25, I.L. R. 1938 Mad. 1, Foll. (1938) 1 M L J. 502 Ref.
——247 Ref. (1938) 2 M.L.J. 775.
——258 Foll 40 Bom L R. 269, Expl. 42 C W.N. 257, Ref. I.L R 1938 Bom. 249=65 I.A 32, 1938 A.L.J. 87; (1938) 1 M.L J 161.
——283 Ref. 42 C W N. 698; 19 P L.T 243, 19 P.L.T. 424.
——300 Expl. (1938) 2 M.L.J. 756.
——366 Ref. (1938) 2 M.L.J. 802.
——376=36 C.W N 1017 Dist. 42 C.W.N. 545, Ref. 1938 O.W N. 360
——405=13 Lah. 702=63 M. L J. 664 (P C) Mentioned (1938) 1 M L.J. 715.
——414=60 Cal. 389 Dist. I.L. R. (1938) 2 Cal. 134.
60 I A. 115=38 C.W N. 393 Ref. 42 C.W N 1090.
——124=12 Pat. 251=65 M. L J. 505 Foll (1938) 1 M. L J. 113, Ref. 42 C.W.N. 469.
——133=64 M L J. 544=12 Pat. 305 (P.C.) Ref. (1938) 1 M L.J. 14 (F B.).
——176=37 C W.N. 629 Rel. 42 C.W.N. 334.
——196=65 M L J. 285=60 Cal. 1029 (P.C) Dist 65 I. A 150, 1938 A L.J. 261=40 Bom L R. 780, 42 Cal. W.N. 537, 19 P.L.T. 290; (1938) 1 M.L.J. 704.
——203=65 M L J. 1=56 Mad 670 (P C.) Mentioned (1938) 1 M.L J. 545 Ref. 42 C.W N. 8.
——242=35 Bom L R. 859 Foll. 40 Bom.L R. 559.
——278=1938 A.L J. 762 Expl & Rel 1938 A.L.J. 680.
——325 (P.C) Foll. 1938 A.L. J. 507.
——354=38 C.W.N. 11 Dist. 42 C W.N. 1.
——362=36 Bom L R. 137 Foll. 40 Bom L.R. 884.
61 I A. 10=61 Cal 285 Ref. 65 I. A. 236; 1938 A L.J 754=I.L R. 1938 Bom 487; 40 Bom.L R. 854, 40 C.W N. 873, (1938) 2 M.L J. 115.
——35=38 C.W N. 335 Ref. 42 C.W.N. 1032.

61 I A.41=38 C.W.N. 375 Foll. 42 C.W.N. 440.
——50 D sc. 19 P.L.T. 367.
——52=36 Bom L.R. 237 Mentioned 40 Bom.L R.411.
——93 Ref 1938 O.W.N. 744.
——163 Foll. 1938 O W.N. 706
——171=61 Cal 470=66 M. L J 506 (P.C) Foll. (1938) 1 M L J. 92
——200=36 Bom L.R. 563=57 Mad. 749 Ref. I.L.R. 1938 Bom 723=40 Bom L. R. 876, Rel 42 C.W.N. 174
——235=9 Luck. 407 Foll. 13 Luck. 672.
——257=57 Mad. 931(P.C.)=67 M L J 167 Dist. (1938) 1 M L J. 574
——286 Ref 13 Luck. 484.
——350 Ref (1938) 2 M L.J. 399
——388=58 Bom 650=39 C W N 34 Dist I L R. (1938) 2 Cal 328, Ref I.L. R. (1938) 1 Cal. 607=42 C. W N. 38, 42 C W.N. 630=42 C W.N. 1028
——405 Ref 40 Bom L R. 1041.
——416 Ref. 65 I A. 75, 65 I. A 263.
62 I.A. 47=39 C W N. 541 Ref 42 C W N 469
——53=39 C W.N 405 Ref. 40 Bom L R. 1057, 42 C. W N 687.
——146 Dist 40 Bom L.R. 1041, Foll 40 Bom.L R. 907, Ref 65 I A 252, 1938 A L.J. 799, 42 C W.N 1013, 1938 O.W N 693, I L R. 1938 Lah 453
——174=59 Bom. 496=39 C W N. 929 Ref 42 C W.N. 129, Rel. I L.R (1938)1 Cal. 290
63 I A 74=59 Mad. 175=38 Bom L R 133 (P.C.) Dist. I.L R. 1938 Bom. 374
——59 Mad. 446 Dist. I L R. (1938) 1 Cal. 48.
——169 Ref. 13 Luck. 484.
——233 Cons. (1938) 2 M L.J. 287.
——261=71 M L J. 105=59 Mad. 809 (P.C) Appl. (1938) 1 M.L.J. 113.
——279=38 Bom. L. R. 739 Foll. 1938 A.L.J. 288, Ref. 40 Bom.L.R. 1053, 42 C.W. N. 989.
——384=17 Lah. 644; Dist. I L.R. (1938) 2 Cal 243.
——397 Ref. (1938) 2 M.L.J. 704.
64 I.A. 55=41 C.W N. 554 Ref. 42 C.W.N. 1186.
——67=16 Pat. 127, (1937) 1 M L J. 254 (P C.) Foll (1938) 1 M.L J. 417, Ref. I. L.R. 1938 Bom. 263.

64 I.A 215 Foll. I.L.R. 1938 Lab. 426.
65 I A. 66=42 C W N 985 Rel. 42 C.W.N 1094.
——132=I L R. 1938 All. 326 Dist. I.L.R. (1938) 2 Cal. 320

I.L.R ALLAHABAD SERIES.

1 All. 249 Rel. 13 Luck. 444.
——296 Ref. 40 P.L.R. J. & K. 31.
——465 Ref. I.L.R. 1938 All. 125=1938 A.L.J. 23.
——478 Foll. 17 Pat. 308.
——557 Disc. 19 P.L.T. 511.
2 All. 241 (P.C) Expl 17 Pat. 281, Ref. 19 P.L T. 8, 1938 Rang L.R. 629.
——682 Ref. (1938) 1 M.L J. 750.
——771 Foll. I.L.R. 1938 Nag. 248.
——780 Ref. I.L R. 1938 All. 922.
——828 Ref. I.L.R. 1938 All. 922
3 All. 12 Dist. I.L R. 1938 Nag. 402.
——24 Ref. 19 P.L T. 489.
——168 Ref. 40 P.L.R. 720
——435 Ref. 40 P.L.R. 319.
——598 Foll 1938 Rang.L.R. 236.
——787 Foll. 17 Pat. 308.
5 All 86 (F.B) Ref. I.L.R. 1938 Lah. 582.
——215 Foll 1938 Rang L R. 236.
——293 Appr. I L.R. 1938 All. 805; Ref. 1938 A.L J. 813.
——577 Ref. I L.R. 1938 All. 922;19 P.L.T. 80; Rel. I.L. R. (1938) 1 Cal. 512.
6 All 1 Ref. 19 P.L T. 202.
——67 Ref. 42 C W.N. 967.
——250 Ref. 40 P.L.R 712.
——262 Ref. 1938=2 M.L J 44.
——269 Ref. I L R. 1938 All. 922.
——366 Foll. I.L.R. 1938 All. 342.
——438 Ref. 19 Pat L.T. 243.
7 All 42 Ref. 17 Pat. 245=19 Pat.L.T. 243.
——102 Ref. I L R. 1938 All. 922.
——178 Ref. 40 P L.R. 319.
——362 Disc. 19 P.L.T. 511
——623 Dist. 1938 O.W.N. 480.
——661 Rel. 13 Luck 560.
——720 Ref. 40 P.L.R. 777.
——775 Ref. 40 P.L.R. 319.

7 All. 822 Disc. 65 I.A. 219 Dist. 1938 A.L.J 235, I.L R. 1938 All 167. Ref. 65 I.A. 119 I L.R. 1938 All 314, 1938 A.L.J. 141, 843, 40 Bom.L R. 735; 843; 43 C.W.N. 353, 13 Luck. 494, 689 (1938) 1 M.L J 458, (1938) 2 M.L.J. 210; 1938 O.W.N. 581; 19 P.L.T. 215.
——844 Ref. 42 C.W.N. 901.
8 All. 64 Dist. 1938 A.L.J. 544.
——111 Foll. I L R. (1938) All 40.
——146 (F.B.) Ref. 1938 A.L.J. 141.
——149 (F.B) Appr. 40 Bom. L.R. 735=(1938) 1 M.L.J. 458 (P.C.) Ref. 65 I.A. 119 I.L.R. 1938 All. 314.
——178 Dist. I.L R. 1938 Lah. 502.
9 All. 134 Ref. 1938 Rang.L.R. 121.
——168 Ref. 40 P.L.R. 498, Rel. I.L.R 1938 All. 146.
——240 (F B) Overr. I.L.R. 1938 All. 750, 1938 A.L J. 565, 1938 O.W.N. 591.
——420 Dist. I L.R. 1938 All. 157.
——625 Ref. 19 P.L T. 675.
10 All 289 Ref. 42 C.W.N. 272.
——535 Foll. 40 Bom.L.R. 132.
12 All 1 Ref. I.L R. 1938 Lah. 494.
——115 Rel. I L R. (1938) 1 Cal. 581=42 C.W.N. 50.
——129 Foll. I.L R. 1938 All. 110.
——213 Ref. 40 P.L R. 64, Rel. I.L R. 1938 Lah 318
——399 Foll. I.L.R 1938 All 342, Ref. I.L R. 1938 Lah. 586; 40 P.L.R. 494, Rel. 1938 A L.J 117.
——461 Ref. I.L R. 1938 All. 209, 42 C W.N. 72.
——595 Ref I L R. 1938 All. 875=1938 A L.J. 943.
13 All 28 Ref. & Rel. 13 Luck. 101.
——89 Ref I.L.R. 1938 All. 904.
——277 Ref. 1938 A.L.J. 742.
14 All. 1 (F.B) Ref. 40 P.L.R. 546, Rel I.L.R. 1938 Lah. 103.
——185 (F B) Appr. I.L.R. 1938 All 538, Ref. 1938 A. L.J. 436.
15 All. 134 Ref. I L.R. 1938 All. 904.
——321 Diss I.L.R. 1938 M. 148.
——367 Ref. I.L R. 1938 Nag. 106.

16 All. 78 Disappr I L.R. 1938 All 513, Disc. 1938 A.L.J. 313 Ref 1938 O.W.N. 433.
——134 Foll. 1938 Rang L.R. 236.
——136 Ref. 19 P.L.T 675.
——179 Dist. I L.R. 1938 All 515, Ref. 1938 A.L.J 495
——286 Ref 40 Bom L.R 512.
——318 (F.B) Dist. I L.R 1938 All 218, Ref 1938 A L.J. 18.
——395 Foll. (1938) 1 M.L.J. 417

17 All 106 Ref 13 Luck. 309.
——198 (P C) Disc 1938 A.L. J 252, Foll. 1938 Rang L. R 35 Ref I L.R. 1938 All. 363, 1938 O.W.N 318.
——498 Dist. I L.R. 1938 Nag. 186.

18 All. 46 Ref. (1938) 1 M.L.J 368.
——92 Ref 1938 A L.J 449.
——395 Ref 40 P L.R. 319.
——471 Ref 1938 A.L.J. 834.

19 All. 60 Ref. I L.R. (1938) 2 Cal. 411, 42 C W.N. 667.
——101 Dist. I.L.R. 1938 Bom. 362=40 Bom L.R. 365.
——235 Ref. 13 Luck. 689.
——300 Ref. 1938 A.L.J. 834.
——307 Diss. I.L.R. (1938) 2 Cal 320.
——342 Foll. 40 Bom.L.R. 389.
——428 Ref. (1938) 2 M.L.J. 623.
——477 Appl I.L.R. 1938 All. 342=1938 A.L J. 117.

20 All 35 Ref. & Ref. 13 Luck. 143.
——100 Ref. 40 P.L.R. 97.
——129 Ref. 1938 A L.J. 553
——234 Dist. 42 C.W.N. 1038.
——258 Ref. 13 Luck. 76.
——267 Ref. 19 P.L T. 675.
——299 Ref. 13 Luck. 560.
——469 Ref. 19 P L.T. 504.
——512 Foll 1938 Rang L.R. 6.
——523 (F.B) Disc I.L.R. 1938 Lah. 148, Ref. 40 P.L. R 640

21 All 4 Diss. 1938 O.W.N. 642; Dist I.L.R. 1938 All 714.
——99 Ref. I.L.R. 1938 Nag. 255.
——181 Expl. (1938) 2 M.L J. 100.
——183 Foll I.L R. 1938 Nag. 289
——223 (P C) Ref. I.L.R. 1938 Nag. 206.
——281 Ref. I.L R. 1938 All. 125, 1938 A.L.J. 23.
——311 Ref. I L R. 1938 Lah. 582
——374 Ref. 40 P L R. 97.
——425 (F B) Foll 40 Bom L R. 324, Ref I.L R. 1938 Bom 655.
——496 Ref. 1938 O.W.N 171. 19 P.L T. 553.
——512 Disc 19 P.L.T. 297

22 All 1 Ref I.L.R. 1938 All. 623=1938 A.L.J. 534.
——49 Dist. I L R. 1938 Nag. 186.
——243 Ref 40 Bom L.R. 512.
——270 Ref. 1938 O W.N. 513.
——284 (F.B.) Ref. 13 Luck. 122

23 All 106 Ref. I.L.R. 1938 Bom. 98.
——130 Foll 40 Bom.L.R. 895
——175 Foll 42 C.W.N. 1059. Ref. I.L.R. 1938 All. 556.
——206 Ref. 40 Bom.L.R. 381
——211 Ref. I.L.R 1938 All. 396.
——247 Ref 40 P.L.R 97.
——291 Appr. 1938 A.L.J. 786. (1938) 2 M.L.J 596. 1938 O.W.N. 606; Ref. 13 Luck 508.
——364 Ref. 1938 O W.N. 561.

24 All. 94 (P C.) Ref I.L.R. 1938 Mad. 688.
——172 Ref. 42 C.W.N. 1164.
——363 Ref 32 S L.R. 1.

25 All. 38 Foll I.L.R 1938 Nag 308.
——59 Foll I L.R. 1938 All. 614 1938 A.L.J. 521.
——175 Ref. 1938 A.L.J. 513.
——179 Ref. 42 C.W.N 1177.
——187 Ref. I L.R. 1938 Mad. 873.
——195 Appl. 42 C.W.N. 293.
——315 Diss. 1938 Rang L.R. 163.
——407 Foll. I.L.R. 1938 Nag. 1.

26 All. 162 Ref. (1938) 2 M.L.J 44.
——220 Ref. 32 S L R 567.
——291 Ref. I.L.R. 1938 All. 767=1938 A.L.J. 617.
——509 Ref. 42 C.W.N. 31.
——572 Ref. 40 P.L.R. J. & K. 31.

27 All. 271 (P.C.) Ref. I.L R 1938 Lah. 173.
——305 Ref. 40 P.L.R. 777.
——361 Foll. (1938) 1 M.L.J. 526.
——622 Foll (1938) 2 M.L.J. 402.
——634=9 O.W.N. 1009 Ref. 42 C W.N. 81.
——702 Ref. 1938 O.W.N. 758.

28 All 30 Foll. 17 Pat. 460; Ref. 19 P.L.T. 594.
——109 Ref. 13 Luck. 20.
——157 Appr. I L.R. 1938 All. 714. 1938 O W.N. 642. Foll 1938 A.L.J. 746.
——174 Foll. 13 Luck 35.
——238 Ref. I.L.R. 1938 Lah. 97=40 P.L.R. 509.
——633 Appr. 42 C W.N 845 Disappr. 40 Bom L R.835, I. L.R. 1938 Lah 383, (1938) 2 M L J. I Diss 65 I.A. 198, Overr in part 1938 A. L.J 825
——651 Ref. 42 C.W N. 286.
——700 Dist. I.L R 13 Luck. 122.

29 All 165 Dist. 40 P.L.R. 33.
——163 Foll I.L.R. 1938 All. 63
——244 Foll. I.L.R. 1938 Nag. 233.
——284 Ref. 1938 Rang.L R. 102.
——301 Ref. 40 Bom L.R. 411.
——331 Ref 40 P L.R. 556
——672 (F.B.) Ref. 32 S.L.R. 215.
——679 Ref. 42 C.W.N. 721.

30 All 1 (P C.) Expl. I.L R. 1938 Mad. 688.
——137 Ref. I.L.R. 1938 All. 389=1938 A.L J 210.
——146 Ref. 1938 A.L J. 379= I.L.R. 1938 All. 466.
——178 Foll. 1938 O.W.N. 642.
——331 Ref. 13 Luck 18.
——388 Foll 1938 Rang L.R. 6
——394 Ref. I.L.R. 1938 All. 904, Expl. 1938 A.L.J. 834.
——400 Foll. 1938 Rang L R. 35
——499 Ref. 42 C W.N. 286

31 All 13 Cons 1938 Rang.L.R. 293.
——51 Ref. I.L R. 1938 All. 563
——56 Ref. 42 C.W.N. 1058.
——156 Dist. 40 Bom L R. 1029
——176 (F.B) Ref. I.L.R. 1938 Nag. 136.
——293 Ref 40 P.L R. 226.
——352 Ref. I.L.R. (1938) 1 Cal. 21.
——551 (P.C.) Ref I L R 1938 Lah. 571.
——572 Ref. 3 I C. 864 Ref. 40 P.L.R 857
——583 (P C) Ref. I.L.R 1938 All 500=1938 A.L.J. 455.
——610 Ref. 40 P L.R. J. & K. 31
——621 Ref. 40 P.L R. 319.

32 All. 3 Ref 1938 A L J. 500.
——11=6 A.L.J. 921 Appr. I. L.R. 1938 All. 741 ; Ref. 1938 A L J. 773.
——314 Ref. I.L.R. 1938 All. 563.
——410 Dist 40 Bom L R. 152; Ref. I.L R. 1938 All 288 ; I.L.R. 1938 Nag 54
——415 (P.C.) Expl 17 Pat. 430 Ref. 19 Pat.L.T. 281.
——623 Disc. 1938 O W N. 561 Not Foll. 19 P.L.T. 101.

33 All 101 Dist. I.L.R. 1938 Lah. 155.
——182 Ref. 19 P.L.T. 215.
——272=15 C W N. 321 (P C.) Ref 42 C W.N. 316.
——283 Ref. 40 Bom.L R. 1029.
——306=8 A.L J. 92 Dist. 1938 A.L J 654.
——356 Ref. 1938 O.W N. 226.
——453 Dist. I.L.R. 1938 All. 184
——472 Dist I L.R 1938 All. 829=1938 A L.J. 919, Ref. 1938 A.L J. 952.
——578 Ref. I.L.R. (1938) 2 Cal 357.
——647 Ref. 1938 A L J. 864, Rel 13 Luck. 18
——677 Foll. I L R. 1938 Nag. 233, Ref (1938) 1 M.L.J 216=I L R 1938 Mad 696.
34 All. 1 Ref. 42 C.W.N 300.
——4 Dist. I I R 1938 All 829=1938 A L J 919.
——63 (P C.) Foll I L R. 1938 Nag. 268.
——118 Ref. I.L.R (1938) 2 Cal 357.
——234 Foll. I.L.R. 1938 Nag. 255
——296 Ref. I L.R. 1938 All. 167.
——354 Diss 1938 Rang.L.R. 163
——429 Dist. & Disappr. I.L.R. 1938 All 500; Ref. 1938 A.L.J. 455.
——451 Ref. I.L R. (1938) 2 Cal 357.
——468 Ref. 46 Bom.L.R. 1041; 42 C.W.N. 345
——545 Ref. I.L.R. 1938 All. 396=1938 A.L.J. 400
——549 Foll. I.L R. 1938 All. 425, 1938 A.L.J 56.
35 All. 105 Ref. I L.R 1938 All. 814.
——211 Ref. 1938 Rang.L R. 256.
——419 Ref 13 Luck 138.
——448 Diss. 1938 Rang.L R. 72
——487 (P C.) Ref. 40 P L.R. 403.
——512 Rel 13 Luck 199.
——582=11 A L J. 950 (F.B.) Rel. 1938 A L J. 673.
36 All 46 Dist. I.L R. (1938) 1 Cal 531=42 C.W.N. 422.
——65 Foll. I.L R. (1938) 1 Cal 245.
——93 Appr. 40 P.L.R 4.
——201 Foll. 40 P.L.R. 429.
——259 Rel. I L.R. 1938 All. 741.
——350 Dist. 19 P.L.T. 424.
——354 Disappr. I L R. 1938 All. 805; Ref. 1938 A.L.J. 813.
36 All. 476=A.I.R. 1914 All. 271 Dist. 40 P.L.R. 794.
——478 Foll. 40 P.L R. 709.
——492 Dist. 13 Luck. 143.
——500=12 A.L J. 844 Ref. I. L.R 1938 All. 686=1938 A.L J. 708.
——560 Dist. 1938 Rang.L R. 521.
37 All 26 Ref. 40 P.L.R. 492.
——107=A.I R 1915 All 114 (2) Ref. 40 P.L.R. 501.
——129 Ref. I.L.R. 1938 All. 623, 1938 A L.J. 534.
——272 Ref. 13 Luck. 20.
——292 Ref. 1938 Rang.L.R 468
——496=13 A.L J. 594 Ref. I. L R. 1938 A.L.J. 715; 1938 All. 761.
——515 Ref. 40 P.L.R. 64; Rel. I.L.R. (1938) Lah. 318.
——600 Rel. 32 S.L.R. 567.
——604 Ref I.L.R. 1938 Nag. 115; Rel. I.L R. 1938 Nag 255.
——649 Disappr. I.L R. 1938 Nag. 344.
——658 Ref. I.L.R. 1938 All. 563.
38 All 1 Foll. I.L R. 1938 Mad. 523.
——197 Ref. I.L R. 1938 All. 563.
——302 Appr. 1938 A.L.J 786; (1938) 2 M.L J. 596; Ref. 13 Luck. 508.
——425 Ref. 1938 A.L.J. 742.
——488 Ref. 1938 A L J. 235.
——517=A I.R. 1916 All 152 Ref. 40 P.L.R. 806
——581 Dist. I.L.R. 1938 All. 243.
——676=A.I R 1916 All. 338 Ref. 40 P.L R. 685.
39 All. 178 Appl. I.L.R. 1938 All. 714.
——196 Ref. 1938 Rang.L R. 542.
——322=A.I R. 1917 All 276 Ref. 40 P.L.R. 685.
——431 Ref. I L.R 1938 Nag. 136.
——469 (F B.) Appr. 1938 A.L. J. 786, (1938) 2 M.L.J. 596, 1938 O.W.N. 606; Ref. 13 Luck. 508.
——496 Expl 17 Pat 430, Ref. 19 P.L.T. 281.
——707 Rel. 13 Luck. 303.
40 All. 89 Ref. 42 C.W N. 391; Rel. I.L.R. (1938) 2 Cal. 103.
——109 Disc. I.L R. (1938) Lah. 148; Dist. 1938 Rang.L.R. 56; Ref. 40 P.L.R. 640.
——142 Disc. I.L.R. (1938) Lah. 341; Foll. 40 P.L.R. 196.
40 All. 147 Dist. I.L.R. 1938 Lah. 417; Ref. 40 P L.R. 235.
——187 Ref. I L.R (1938) 1 Cal. 607=42 C.W.N. 38.
——221 Ref. 45 P.L.R. 806.
——292 Appr. I.L.R. 1938 Bom. 655=40 Bom.L R 324.
——407 Disc. 19 P.L.T. 227.
——517 Ref. I.L.R. 1938 All. 422.
——584 Ref. 1938 A.L.J. 235.
——593 (P.C) Ref. I L.R. 1938 All. 761=1938 A L.J. 715.
——612 Rel. 1938 A.L.J. 652.
——648 Ref. I.L.R. 1938 All. 673; Rel. 1938 A.L.J. 558.
41 All. 111 Ref. 42 C.W.N. 18.
——324 Ref. 40 P.L.R. 54.
——361 Foll. 40 Bom.L R. 202
——366 Disappr. I.L.R. 1938 All. 422.
——417 Ref. 42 C.W.N. 812.
——509 Dist. 13 Luck. 143
——611 Ref. 1938 O.W.N. 711.
——658 Rel. 32 S L.R 106
——669 Diss. (1938) 1 M.L.J. 113.
42 All. 146 Ref. (1938) 1 M.L.J. 670.
——158 (P C.) Ref. 40 P.L R. 289=Rel. I.L R. 1938 Lah. 140; I.L.R 1938 Nag. 354.
——191 Ref. 1938 A.L.J. 544
——227 Foll. I.L.R. 1938 Nag. 174.
——314 Disc. 19 P.L.T. 461
——364 Disc 19 P.L T. 227.
——519 Ref. I.L.R. 1938 All. 148.
——593 Ref. 13 Luck. 174.
43 All 60 Ref. I.L.R. (1938) 1 Cal. 512.
——152 Ref. 13 Luck. 353.
——374 (F B.) Appl. I.L.R. 1938 Lah 271, Reviewed. 40 P.L.R. 153
——383 Ref. 42 C.W.N. 286.
——416 Ref. I.L.R. 1938 All. 556; 1938 A L.J. 513.
——469 Disc. 19 P.L.T 227.
——564=19 A L J. 558 (F.B) Ref. 1938 A.L.J. 813, Appl. 43 All. 564; 19 A.L J. 558, I L.R. 1938 All. 805; Dist. I.L R. 1938 All. 22.
——606 Ref. I.L.R. 1938 All. 396
——617 Dist. I.L R. 1938 All. 35
——688 Rel. (1938) 1 M.L.J. 17.
44 All 19 Ref. 40 P L.R. 591.
——61=A.I R. 1922 All. 155 Foll. 40 P.L R. 305
——248 Not Foll. 13 Luck. 560.
——258 Expl. 1938 Rang L.R 385.
——265 Rel. I.L.R. 1938 All. 348; 1938 A L.J. 102.
——327 Ref. I.L.R. 1938 All. 563.

44 All 300 Ref 1938 Rang L.R 243
——314 Ref I.L.R. 1938 Nag 364
——523 Rel. 1938 A.L.J 544
——634 Dst. I.L.R 1938 All 454.
——656 (F.B) Reviewed 17 Pat. 507=19 P L T 309
——743 Ref 13 Luck 353

45 All. 27 (F B) Dist 42 C W N 545.
——79 Ref 1938 Rang L R 256
——70 Dist 42 C W N 1038
——95 Expl & Rel. I L.R. 1938 Nag 136.
——99 Foll 40 P L.R. 469
——179 Ref 13 Luck 531
——369 Dist I.L.R 1938 All. 922, Not Foll. 19 P L.T 80
——388 Ref I L R (1938) 1 Cal. 607=42 C W.N 38.
——609 Disappr I L.R 1938 All 814
——715 Ref 42 C W N 359

46 All 95 51 I.A 129 (P C). Foll. 17 Pat. 168; Ref. 1938 A L.J. 644.
——250 Rel. (1938) 1 M.L.J 193.
——328 Dist. I L.R. 1938 All. 337=1938 A.L.J 121.
——333 Dist. 13 Luck. 662.
——458 Diss. 13 Luck. 463, Ref. 19 P.L.T. 485
——509 If good law. I L.R. (1938) 2 Cal 368
——538 Diss 13 Luck. 246.
——617 Dist. I.L.R. 1938 All 829.
——651 Ref. 40 P.L.R. 319.
——754 Ref. I.L R. 1938 All. 125.
——847 Dist. I L.R. (1938) 2 Cal 266; Ref. 42 C.W.N. 38, 42 C.W.N 701; I.L.R (1938) 1 Cal. 607.
——860 Rel I.L.R. 1938 Nag 54
——917 Ref. I.L.R. 1938 All 904.

47 All 17 Foll. 13 Luck. 344.
——98 Foll. 1938 Rang L R. 615
——114 Disc. 19 P.L.T. 665.
——121 App. I.L R 1938 All. 805; Ref. 1938 A.L J. 813.
——122 Rel. I.L.R 1938 Nag. 136.
——291 Diss 32 S L.R. 67, Rel. 32 S L.R 106
——353 Foll. I.L.R. 1938 Bom. 58.
——361 Ref. I L.R. 1938 Nag. 151
——385 Dist. I.L R. 1938 All. 35; Ref. 40 P L.R. 303.
——409 Foll I L.R. 1938 Nag. 248.
——430 Rel. 13 Luck. 450.
——490 Ref. I.L.R 1938 All. 761
——541 Ref 13 Luck. 442
——756 Not Foll (1938) 1 M.L. J 628 (F B), Ref. I.L.R 1938 Mad 598
——878 Ref 13 Luck 246.
——883 Ref 40 P L R. 591
——916 Appr. I L R 1938 All 805.

48 All 81 Dist I.L R. 1938 All. 350.
——150 Ref. I.L.R. 1938 All. 63
——152 Ref 40 P.L R. 188.
——175=24 A.L.J. 66 Ref. I. L.R. 1938 All. 805=1938 A.L.J. 813
——251 Not Foll. I.L.R. 1938 Nag 370.
——264 Disc. 1938 Rang L.R. 104
——375 Ref. 19 P.L.T. 161.
——395 If good law. I.L.R. (1938) 2 Cal. 368.
——425 Dist. 1938 Rang.L R. 56; Ref. 40 P.L R. 640.
——493 Disc. 1938 O.W.N. 561.
——510 Ref. 17 Pat. 89; 19 P. L. T. 372.
——580 Ref. 32 S.L.R. 167.

49 All. 67 Disc. 1938 A.L.J. 252; Ref. I.L.R. 1938 All. 363; 1938 O.W.N. 318
——92 Ref. I.L R. (1938) 1 Cal 665=42 C.W.N. 1121.
——240 Ref. I.L R. (1938) 2 Cal 221.
——367 (P.C) Ref 40 P L.R. 206.
——388 Ref. (1938) 1 M.L.J. 368.
——405 Ref. 13 Luck. 680
——557 Doubt. 1938 A L.J. 141. Ref 40 Bom L.R. 735; I.L. R 1938 All 314; 42 C.W. N. 353; (1938) 1 M.L J. 458; 19 P L.T. 215.
——603 Dist. 19 P L T. 198; Ref. 17 Pat. 338.
——701 Dist. 13 Luck. 279.
——726=1927 A L J. 589 Disc. 1938 A.L J. 252, Ref. 1938 O.W.N. 318.
——727 Disappr. I.L.R. 1938 All. 363.
——773 Ref. 40 P.L R. 64, Rel I L.R. 1938 Lah. 318.

50 All. 1 Ref. 1938 A L J. 644; (1938) 2 M.L J. 256
——130 Ref. I L.R. 1938 All. 441.
——145 Rel. I.L.R. 1938 Nag. 333
——186 Dist. & Disc. I.L R. 1938 All. 681; Ref. 1938 A. L. J. 531.
——209 Foll. 40 Bom.L R. 512.
——218 Dist I.L.R. 1938 Lah. 155; Foll 1938 A.L.J. 521, Ref. I.L.R. 1938 All. 614.
——321 Diss. I.L.R. 1938 All. 148, Ref 13 Luck 129
——342 Disc. & Not Foll. I.L. R. 1938 All. 143
——354 Dist. I L.R 13 Luck. 279.
——394 Ref. 1938 Rang.L.R. 542
——543 (F.B) Appr 40 Bom.L. R. 317; Rel. I L.R. 1938 Bom. 357.
——625 Ref. I L.R. 1938 All. 483=1938 A.L.J. 282.
——655 Expl. I.L.R. 1938 All. 757=1938 A.L.J 617.
——722 (P.C.) Foll. I.L.R. 1938 Nag. 157; Ref. 32 S.L.R. 18.
——776 Not Foll. 17 Pat. 386
——810 Not Foll. 13 Luck. 369.
——909 (F.B) Foll. 42 C.W.N. 588; Ref. I.L.R. (1938) 2 Cal. 221.
——965 Ref. I.L.R. 1938 All 563.
——969 (F.B) Foll. 17 Pat. 386; Ref. 17 Pat. 168; 40 P.L.R. 678.
——980 Dist. 13 Luck. 397.

51 All. 79 Appl 1938 O.W.N. 226, Foll. I.L.R. 1938 All. 125; Ref I.L.R. (1938) 1 Cal. 607=42 C.W.N. 38.
——136 Foll. 40 Bom L.R. 946, Ref. I.L.R. 1938 Nag. 136.
——237 Dist. 13 Luck. 340; Ref. 42 C.W.N. 437; I.L. R. 1938 All. 342, 1938 O. W.N. 360.
——267 Foll. I.L.R. 1938 Nag. 370
——285 Dist. I.L R. 1938 All. 441.
——314 Ref. I.L R. (1938) 2 Cal 287=42 C.W.N. 586.
——346 Dist. I.L R. 1938 Lah. 140; Rel. I.L.R. 1938 Nag. 354.
——527 Appr. I L R. 1938 All. 337; Disc. 17 Pat. 191.
——530 Appr. (1938) 2 M.L.J. 189.
——550 (F.B) Rel. I.L.R. 1938 Lah. 439.
——612 Foll. 13 Luck. 35.
——621 Ref. & Rel 40 P.L.R. 319.
——651 Rel I.L.R. 1938 Nag. 45
——675 Ref. I.L.R. 1938 All. 556, Rel. 1938 A.L J. 513.
——920 Ref. 42 C.W.N. 1106
——981 Dist. 13 Luck. 279.
——1010 Disappr. I.L R. 1938 All. 805.

52 All. 139 Ref. 1938 O.W.N. 489.
——232 Foll. I.L.R. 1938 A 904

52 All. 235 Dist. (1938) 1 M.L.J. 368
——328 Dist. I L.R. 1938 Lah. 289.
——363 Foll 1938 Rang.L R. 35, Ref. I.L R. 1938 All. 148, I.L R. 1938 Lah. 148=40 P L.R. 640
——406 Rel. (1938) 2 M.L.J. 523
——459 Foll. 42 C.W.N 548; Ref I.L R (1938) 2 Cal 320.
——501 Rel. I L R. 1938 All. 462.
——553 Expl I.L R. 1938 All. 89; Not Appr. (1938) 1 M. L J 344.
——688 Rel I L.R 1938 Lah 511
——761 Ref I L R.1938 All 58.
——844 (F B.) Foll. I L R 1938 Mad 460=(1938) 1 M.L J. 159
——886 Rel. I L R 1938 Lah. 221.
——927 Cons 40 P L R. 69; Foll. 13 Luck. 560, Not Foll. 13 P L T 101.
——954 Ref (1938) 1 M.L.J. 574.
——1005 Diss 42 C.W.N 300.
——1011 Dist. 17 Pat. 15; Not foll 19 P L.T. 476; Ref. 40 P.L.R. 265.

53 All 75 Ref. I L.R. 1938 All 754.
——103 Dist. 40 P.L R. 600; Foll I.L R. 1938 Lah. 75; Ref. 19 P.L T. 645.
——114 Ref. 17 Pat. 268=19 P L T 579, I L.R. 1938 All 741.
——190 Rel. I.L.R. 1938 Nag 221.
——239 (F.B.) Rel. I L R. 1938 Nag. 10.
——416 Foll. 17 Pat. 9.
——484 Ref. (1938) 2 M.L.J. 165.
——496 Ref I L.R 1938 All. 922
——568 Overr. 1938 A.L.J. 786, (1938) 2 M.L J. 596; Ref 13 Luck. 508=1938 O.W. N. 606
——612 Ref. I.L R. 1938 All. 805=1938 A.L J 813.
——673 Dist. (1938) 1 M.L.J. 368.
——778 Ref. 1938 A L J. 813=I L.R. 1938 All 805.
——868 Rel I.L.R. 1938 Nag. 10; I.L R 1938 Nag 136.
——951 Ref (1938) 1 M.L J. 320.
——1006 Ref. 1938 A.L.J 813=I.L.R. 1938 All. 805.

54 All. 6 Ref. 13 Luck. 35.
——55 Ref. I.L R. 1938 All. 681
——57 Rel. I L R. 1938 All. 22, I.L.R (1938) 1 Cal. 531=42 C.W N. 422.
——189 (P C.) Foll. I.L.R. 1938 Lah. 93
——280 Appr. I L.R. 1938 Mad 275=1938) 1 M L J. 54.
——293 Appr. 42 C.W.N. 1058.
——350 Expl. I L R. 1938 All. 875.
——363 Rel. 42 C.W.N. 1258.
——394=A I R. 1933 All. 1 Ref. 13 Luck 31
——411 Ref. 40 P.L R. 12.
——448 Foll (1938) 2 M.L.J. 156
——525 Ref. 13 Luck. 560
——534 Rel. 13 Luck. 697.
——563=34 Bom L R. 1079 (P C.) Cons 40 P.L.R. 678, Expl. 40 Bom.L.R. 381; 17 Pat 386.
——573 Ref I L R 1938 Lah. 470
——698 Ref. 1938 A.L J. 670.
——738 Foll. I L R 1938 All. 441.
——806 Ref. I L R. 1938 All 314=1938 A L.J. 141; 40 Bom.L R. 735; 42 C.W N. 353, (1938) 1 M.L.J. 458; 17 Pat. 303=19 P.L.T. 215.
——812 Ref. I.L R 1938 All 470.
——846 Foll. & Expl. I.L.R. 1938 All. 100, 40 Bom.L.R. 995.
——858 Not Foll (1938)1 M.L. J. 728.
——869 Dist. I L.R (1938) 2 Cal. 411=42 C.W.N. 667.
——879 Ref I.L.R. 1938 All. 114
——897 (F.B) Disappr. I.L.R. 1938 Nag 206, Diss. 1938 Rang I. R. 430; Foll. 40 Bom.L R. 1001.
——916 Ref. 13 Luck. 219.
——948 Appr. I L R. 1938 All. 922, Disc 19 P L T. 111.
——1036 Ref. 40 P.L.R 579.

55 All 68 Ref. I L R. (1938) 1 Cal. 290=42 C.W.N 129.
——164 Ref. I.L.R. 1938 All. 243.
——221 Disc. 19 P L.T. 111; Ref. I L.R. 1938 All. 922, 19 P.L T. 119
——241 Foll 1938 O W.N. 377.
——246 Dist. I L.R. 1938 Nag. 186.
——274 Dist. I.L.R. 1938 All 470, Rel I.L R. 1938 Nag. 106.
——283 Dist. I L R. 1938 Nag 10; I.L.R. 1938 Nag. 136

55 All 432 Ref. 40 P.L.R. 712.
——512 Ref. I.L.R. 1938 All. 206.
——564 Rel. I.L.R. (1938) 1 Cal. 531=42 C.W.N. 422.
——672 Ref. I L R. 1938 All. 396.
——725 (F.B.) Not Foll. I.L.R. 1938 Nag. 115.
——791 Disc. I L R. 1938 All. 470.
——1002 Foll. I.L.R. 1938 All. 823.

56 All 111 Ref. 40 P.L.R. 319.
——302 Foll. I.L.R. 1938 All 875.
——376 Disc. & Dist. I.L.R. 1938 All. 741, Ref. 1938 A. L.J. 773.
——401 Reversed. 65 I.A. 119
——468 (P.C.) Ref. I.L.R. 1938 All. 125, I.L R. 1938 Lah. 47.
——504 Foll. I.L.R. 1938 All 638=1938 A.L.J. 604.
——548 Dist. I.L.R. 1938 All. 829, Ref. I.L.R. 1938 All. 330=1938 A L.J. 268.
——702 Dist. I L.R. 1938 Nag. 186.
——766 Disc. I.L.R. 1938 All 500.
——828 Reversed 65 I.A. 182
——885 Ref. I.L.R 1938 All. 823.
——895 Foll. 1938 Rang.L.R 651.
——921 Ref. I.L.R. 1938 All. 342; 1938 O.W.N. 360
——1009 Ref. I.L.R. 1938 Lah. 47.

57 All. 1 Ref. I L R. 1938 All. 658
——17 Ref. I L.R. 1938 All 805.
——26 (F B) Ref. I L.R 1938 Lah. 571.
——85 Rel. I L.R. 1938 Nag. 255.
——159 Ref. 40 P L.R. 319
——242 (P.C.) Appl I.L.R 1938 All. 861; I.L.R. 1938 Mad. 439, Foll. I.L R. 1938 Lah 193=40 P.L R. 533 (F.B.).
——278 (F.B) Ref. (1938) 1 M.L.J. 113.
——357 Ref. I L R. 1938 Nag. 136.
——434 Foll. 40 Bom L.R. 1010.
——440 Ref. 13 Luck. 31.
——605 (F B) Foll. 17 Pat. 386, 40 P L R 678.
——638 Appr. I.L R. 1938 All. 470
——658 Foll. (1938) 2 M.L.J. 833, Ref. 40 P.L.R. 509, Rel. I.L.R. 1938 Lah. 97.
——690 Ref. I.L.R. 1938 All. 922.

57 All. 740 Disappr. I.L.R. 1938 All 691.
——755 Diss. I L.R. (1938) 2 Cal. 287.
——785 Diss. 42 C.W.N. 586.
——852 Appr. I.L.R. 1938 All 462.
——854 Appr. I L.R. 1938 All 462.
——949 Ref. I.L.R 1938 All 412
58 All 40 Disc. & Dist & Foll I L.R 1938 All 252.
——63 (F.B) Ref I.L.R. 1939 Lah 221.
——85 Diss. I L.R. (1939) 2 Cal. 287 = 42 C.W.N 581.
——98 Foll. I L.R. 1938 All 389
——146 Disc. I.L.R. 1938 All. 470
——191 Ref. I.L.R. 1939 All 11
——200 Ref I L R 1938 Lah 10
——261 (F.B) Foll 40 Bom L. R. 968, Ref. (1938) 1 M.L.J. 620.
——413 Disc. & Overr. I.L.R. 1938 All. 503 (F B.)
——495 Ref (1938) 2 M L.J. 44, 1938 Rang L.R. 371.
——569 Appl I.L.R. 1938 All 823
——644 Diss 1938 Rang L R. 1
——946 Appr I L R 1938 All 805
——949 (F B) Dist. 42 C W N 266; Ref. I L R. 1938 All. 35.
——1041 Ref I L.R. (1938) All. 563.
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——17 Ref I L.R 1938 All 805
——22 (F B) judgment of Allsop Foll. 17 Pat. 281.
——259 Ref I L R 1938 All 470
——272 (F.B) Rel. 42 C W N 18.
——403 Appr. I L R. 1938 305.
——419 Ref. 42 C.W.N. 129.
——434 Dist. & Foll I L.R 1938 All. 252.
——542 Ref I.L R. 1938 All. 35.
——655 Ref I L R. 1938 All 425.
——666 Ref I L R. 1938 All. 58
——805 Ref. I.L.R. 1938 All. 29
——880 Diss. 1938 Rang L R. 430, Foll. 1938 O.W.N 401; Ref. 19 P.L.T. 500
——901 Ref. I.L R. 1938 All. 814.

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——71 Foll. I.L.R. 1939 All. 153.
——330 Ref. I.L.R. 1939 All. 822.
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——534 Ref 40 P.L.R. 286
——845 Dist. I.L.R. 1938 All 922.
4 A.L.J 475 Ref. I L.R. 1938 All 563.
5 A.L.J 367 Rel 1938 A L.J 881.
——523 Diss I L.R 1938 All 664 = 1938 A L.J 561.
6 A L J 647 Ref I L.R. 1938 All. 563 = 1938 A L.J. 585 (F.B).
7 A.L.J 755 Ref. I.L.R. 1938 All. 563.
8 A.L.J. 645 Foll. 1938 O W.N 475.
9 A.L.J. 173 Diss. I L.R. (1938) 1 Cal 216, Not Foll I L.R. 1938 Nag 54, Ref 42 C W N 179
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——569 Ref I L R. 1938 All 148.
——819 Ref 1938 A L J 308
10 A L J 3 Disc 1938 A L J 252, Ref 1938 O W N. 318.
——413 Dist 13 Luck. 143
11 A.L J. 18 Rel. 1938 A.L.J. 901.
——649 Ref. I L R 1938 All 396 = 1938 A L J 400.
——990 Disc I L.R. 1938 All 538 = 1938 A L J 436.
12 A.L J 685 Rel. 1938 A.L J 486
13 A L J 79 Foll I.L R 1938 Nag 174
——745 Ref 1938 O W N 471
14 A L.J. 1055 Ref. 1938 A.L.J. 1.
15 A L J. 223 Foll. 1938 A L J 746, 1938 O.W.N. 642
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16 A L J. 307 Dist 1938 O W.N 480.
——428 Ref. 1938 A L.J 222.
——429 Ref. I L.R. 1938 All 192.
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——625 Rel. 1938 A L.J. 673.
——653 Ref 1938 A L J 69.
17 A.L J. 368 Dist. 1938 A.L J. 222.

18 A.L J. 609 Ref. 1938 A.L.J. 511.
19 A.L J. 101 Dist. I.L.R. 1938 All. 243, Ref 1938 A L.J 1.
——227 Rel. 1938 A.L J. 727.
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20 A L J. 209 Ref. 1938 A.L.J. 742.
——601 Dist. 1938 A L.J 235.
——609 Dist. 1938 A.L J. 328.
——672 Rel. I.L.R. 1938 Nag. 333
21 A.L J 457 Ref I L.R. 1938 All. 396.
——667 Dist. 1938 A L.J 901.
22 A L J. 70 Ref. I L R. 1938 All. 396
——690 Rel 1938 A L.J. 235
——968 Ref I.L.R. 1938 All 198.
——1039 Ref. 1938 A L.J. 553.
23 A L.J. 223 Dist. 1938 O.W.N. 642.
——254 Ref. 1938 A.L J. 715.
——433 Ref 1938 Rang.L.R. 121.
——880 Rel. 1938 A.L.J 930; Ref. 13 Luck 209.
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25 A L J 545 (F B) Foll 1938 A L J 333.
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——878 Ref 1938 A L J 465
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26 A L J 598 (P.C.) Appl. 1938 A.L J 557
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——1016 Ref 42 C W N 345.
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——581 (P C) Dist. & Foll 1938 A L.J. 746, 1938 O.W.N. 642, Rel 1938 A.L J. 18
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——286 Rel 1938 A L J. 121
——794 Dist 13 Luck 143.
——918 Ref 1938 A L J 813.
——958 Dist & Appr I L R 1938 All. 466, Rel 1938 A L J. 379
——1100 Appl 1938 A L.J 834
1930 A L J 109 Rel 1938 A L J. 727
——148 Dist & Not Foll I L R. 1938 All. 738, Ref 1938 A.L J 703.
——256 (F.B) Rel 1938 A L J. 519.

1930 A L J 330 Rel. 1938 A L.J. 881
——588 Dist 13 Luck. 174.
——911 Dist I.L.R. 1938 All 647, Ref. 1938 A.L.J. 497.
——987 Dist. 1938 A.L J 449.
——1073 Ref. I L.R. 1938 All 330, 1938 A.L J. 268.
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——1233 (F.B.) Ref 1938 A.L. J. 720
——1312 Rel 1938 A L.J 52
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——166 Ref 1938 O W.N. 758.
——223 Dist I.L.R 1938 All. *714 = 1938 A.L J 746*
——319 Dist I L R. 1938 All 848, Ref 1938 A L.J 917.
——444 Foll 1938 A L.J 878. Ref. I L R 1938 All. 800
——458 Cited 1938 A L J 449
——513 Cited 1938 A L J 449, Rel 1938 A L.J 930.
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——668 Appl I L R 1938 All. 494 = 1938 A L J 477.
——690 Dist I L R 1938 All. 647, Ref 1938 A L J 497.
——909 Ref 1938 A L J 502.
——985 Dist I L.R. 1938 All 500
——1000 Expl I L R. 1938 All. 875, Ref. 1938 A.L.J 943.
——1049 (F.B) Rel 1938 A L. J 742
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——162 Ref. 1938 A.L J. 943
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——321 Foll 1938 A.L.J. 128.
——341 Rel. 1938 A.L.J. 851.
——365 Appl. 1938 A.L J 63.
——466 Ref I.L R. 1938 All. 470.
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——516 Ref. I L.R 1938 All. 35.
——562 Overr. I.L.R. 1938 All. 528, Ref 1938 A.L J 444
——572(F B) Dist. I L R. 1938 All. 441; Rel. 42 C.W.N 1106, Ref. 1938 A.L J 333.
——588 Ref. 1938 A L J. 736.
——684 (F.B) Foll. 1938 A.L. J. 578.
——788 Foll. I L.R. 1938 All. 888 = 1938 A.L.J. 855
——971 (P C.) Ref. 1938 A.L.J. 125.
1932 A.L.J. 1090 Foll. 40 Bom. L.R. 952.
1933 A L J. 21 Ref. 1938 A.L.J. 1
——103 Ref 1938 A.L J. 63
——123 (F B.) Ref. 1938 A.L.J. 12
——673 (F.B.) Dist. 1938 A.L. *J. 578.*
——728 Ref. 1938 A.L.J. 625.
——1127 (F B.) Foll. 1938 A. L J. 449
——1414 Rel. 1938 A L.J. 894.
——1537 Dist. I L.R. 1938 All. 470
——1551 Ref. 1938 A L J. 943.
1934 A L J. 318 Ref. 1938 A.L J 455
——381 Ref. 1938 A L J. 813.
——406 Ref 1938 A.L.J. 894.
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——585 (P.C.) Foll. 1938 A L J 502.
——713 Ref. I L R. 1938 All. 58
——770 Ref. I L R. 1938 All. 528; Dist 1938 A L.J. 444.
——772 Rel 1938 A L J. 117.
——779 Mentioned. 1938 A.L J. 23.
——809 Ref. 1938 O.W N. 130.
——925 (P.C.) Ref. 1938 A L. J. 470
——955 Rel I L.R. 1938 All. 470 = 1938 A.L J. 578.
——1035 Dist. 1938 O W.N. 360.
——1093 Reversed. 1938 A L.J. 488 (P C).
——1229 Ref I.L R 1938 All 441 = 1938 A.L.J 333.
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——1309 Ref. 1938 A.L.J. 107.
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——261 Ref. 1938 O.W.N. 62, Rel 1938 A.L.J. 955
——405 Diss. 1938 A.L.J. 736
——474 Appr. I.L R. 1938 All. 922.
——505 Ref. I.L R 1938 All. 396 = 1938 A L J. 400
——645 Dist. I.L R. 1938 All 441; Ref. 1938 A.L.J 333
——662 Overr. 1938 A L J. 561.
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——925 (P C.) Foll 1938 A.L J. 736.
——950 Diss. I.L R. 1938 All. 548 = 1938 A.L J 430.
——973 Ref. I L.R. 1938 All. 623 = 1938 A.L J. 534.
——998 Ref. 13 Luck. 428.
——1214 (F.B) Foll. 1938 A. L.J. 894
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——1291 Ref. 1938 A L.J. 117.
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——404 Rel. 1938 A L.J. 235.
——546 Appr. I.L R. 1938 All. 1.
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——622 Ref. 13 Luck. 20.
——895 Ref. 1938 A.L.J 943.
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——940 Dist. I.L.R. 1938 All. 500.
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——177 Dist. 1938 O W.N. 220, Foll. I L.R. 13 Luck. 544.
——178 Rel. 1938 O.W.N. 573.
——275 Ref. I.L.R. 1938 All. 396.
——363 Ref. 13 Luck. 568.
——459 Ref. 13 Luck. 402.
——*518 Rel. 1938 A L.J. 851.*
——562 Rel. 1938 A.L J 578.
——659 Rel. 1938 A L J 313, 1938 O W.N. 433
——767 Expl. I.L.R 1938 Nag. 115
——769 Ref. 42 C.W.N 212
——801 Appr. I L R 1938 All. 528, Ref. 1938 A.L.J. 444.
——842 Ref. 1938 A.L J 107.
——870 Foll 1938 O.W N. 331.
——*882 Rel. 1938 A L.J 892.*
——886 Rel. 1938 A L J. 576.
——945 Ref. 1938 O.W.N. 683.
——1032 (P.C.) Ref. 1938 A.L. J 308.
——1101 Rel 1938 A.L J. 628.
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——1194 Ref. 1938 A L J. 703.
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——1227 Ref 1938 A.L J. 686.
——1235 Rel. 1938 O W.N. 801
——1320 Rel. 1938 A.L.J. 235
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——103 Ref. 1938 A.L.J 705.
——268 Foll 1938 A.L J. 919; Ref. 1938 A.L J 952.
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——628 Foll. 1938 A L.J. 694.

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——204 Ref I L R 1938 All. 396 = 1938 A L J 400
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——624 Ref I L R 1938 Bom. 1, Rel 13 Luck. 13.
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4 Bom. 37 (F B) Foll I L.R 1938 Nag. 255.
——358 Dist 1938 O.W N. 801.
——429 Ref. I L.R. 1938 Bom. 98
4 Bom. 545 Ref. 40 P.L.R. 588.
5 Bom. 38 Ref. I.L.R. (1939) 1 Cal. 309.
——99 Dist. I L.R. 1938 Bom. 1; Foll 40 Bom.L.R. 422, Ref. I.L.R. 1938 Bom. 454.
——110 Disc. I.L.R. 1938 Nag. 115.
——232 Appl. 1938 O W.N. 454
——249 Ref. I.L.R. 1938 Lah. 305
——338 Ref. I L.R. 1938 Mad. 455
——584 Ref (1938) 1 M.L.J 63.
——614 Ref 1938 O W.N 535.
——630 Ref. 40 Bom L.R. 428.
6 Bom 34 Not Foll 19 P.L T 432
——546 Ref 40 P L R 319, Rel I L R 1938 All. 904.
7 Bom 213 Ref. I.L.R. (1938) 1 Cal. 75.
8 Bom 17 Ref. 40 P.L.R 685.
——105 Dist. I.L.R. 1938 Nag. 186.
——405 Mentioned 40 Bom.L.R. 1010.
9 Bom 108 Dist I.L.R 1938 All. 535, Ref 1938 A.L J. 495.
——371 Foll (1938) 2 M L.J 137
——419 Ref 40 Bom L R 1015
——458 Ref 40 P.L R. 243.
10 Bom 439 Ref I L R 1938 Lah 494
11 Bom 199 Foll 40 Bom L.R. 422, Ref. I.L.R. 1938 Bom. 454
——488 Foll. 40 Bom L R. 152
——551 Rel. I L.R 1938 Nag. 54.
——614 Ref 40 Bom L R 439
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——164 Ref I L R (1939) 1 Cal 75
——202 Foll I L R 1938 Mad 621, Ref. (1938) 2 M L.J 613.
——247 Ref. 40 P L R. 319.
——*311 Ref 32 S.L R. 167.*
——363 Disc. I.L R. 1938 Lah 374.
——400 Ref 1938 Rang.L R 565.
13 Bom 160 Dist 1938 Bom 84
——389 Rel 32 S L.R. 567
——506 Ref 1938 Rang L.R 121.
14 Bom. 82 Ref. 40 Bom.L.R. 88.
——102 Diss 40 P.L R 801
——115 Ref 1938 Rang L.R. 213, 32 S L R 87
——213 Ref 42 C.W.N. 1102.
——458 Foll. 40 Bom.L.R. 166
——482 Foll. 40 Bom.L R. 418.
15 Bom. 82 Rel. 40 P.L.R. 33.
——318 Ref. 1938 O.W.N. 318.
——416 Ref. (1938) 1 M.L.J. 750.
——647 Ref. 40 Bom L.R. 1015.
16 Bom 338 Foll. 40 P.L.R. 82.
——441 Foll. I.L.R. 1938 Nag. 308
——580 Ref. 40 Bom.L R. 832.
——673 Ref. 42 C W.N. 783.
17 Bom. 431 (P.C) Ref. 40 Bom.L.R. 88
——475 Ref. 40 Bom L.R. 1015.
——560 Rel (1938) 1 M.L.J. 422.
——690 Ref. I.L.R 1938 All. 904.
18 Bom 136 Foll. 40 Bom L.R. 418.
——260 Ref. 40 P.L.R. 768.
——283 Ref. I.L R. 1938 Nag. 50.
——337 Mentioned I.L R. 1938 Bom. 64
——369 Ref. (1938) 2 M.L.J. 189.
19 Bom. 532 Ref. I.L.R. 1938 Bom. 655, Foll. 40 Bom. L.R. 324.
20 Bom. 15 Rel. (1938) 1 M L.J. 146.
——133 Ref. 19 P L T 309.
——165 Foll. 17 Pat. 369. Ref. 19 P L T 268
——265 Dist 40 Bom L R 1040.
——469 Ref 1938 O W N 535.
——636 Dist 1938 Rang.L.R 19
21 Bom. 279 Ref I L R (1938) 1 Cal. 146 = 42 C W N 55.
——281 Ref 32 S L R 215
——297 Ref. 1938 Rang L.R. 166.
——351 Ref. (1938) 2 M.L.J 44
——822 Ref. 1938 Rang L R. 176
22 Bom 235 Rel 32 S L R 185, Ref I L R. 1938 All. 875 = 1938 A L J. 943.
——281 Rel. (1938) 1 M L.J. 368.
——*340 Ref I L.R 1938* Lah. 586 = 40 P L.R 494
——711 Ref 40 P L R 501
——774 Foll 40 Bom L R 418.
——783 Rel. I L R. (1938) 1 Cal. 512
——899 Foll. I L.R. 1938 Nag 308.
——963 Ref. 40 Bom L.R. 1040
23 Bom 544 Ref. I L.R 1938 Mad. 533
——608 = 1 Bom L R. 95 Foll. 40 Bom.L.R. 422
——626 Disc & Dist. (1938) 1 M.L.J 769.

23 Bom 659=1 Bom L.R. 118 Ref 40 Bom L.R. 1041; 42 C W N 345
——789 Doubt I L. R. 1938 Bom 84
24 Bom 360=2 Bom L.R. 25 Foll 40 Bom L.R. 174, Ref 1938 2 M.L J 189
——423=2 Bom L R. 52 Mentioned 40 Bom.L.R. 820
25 Bom 85 Disc I L R. 1938 Lah 341, Foll 40 P.L.R. 196
——306 Rel. I L R 1938 Bom. 84
——332 Ref I L R. (1938) 1 Cal 202
——337 Ref. 19 P L T 193.
——367=2 Bom L R 1134 Rel 40 Bom L R 202.
——387 Ref 32 S L R. 567, Rel 32 S L R 106
——680 Dis I L R. (1938) 1 Cal 290, Ref. 42 C.W N. 129
26 Bom. 146 Dist I L R (1938) 1 Cal 685.
——150 Ref 1938 Rang L R 150
——198 Ref 40 P L.R 319.
——206 Rel I L R (1938) 1 Cal 369.
——305 Ref I L R 1938 All 909
——374 Rel. 40 P L R. 46.
——526 Ref. 40 Bom L R 559
——551 Appr. I L.R. 1938 All 805
——558 Ref. 40 P L.R. 806.
——597 Foll. I L.R 1938 Nag. 280.
——643 Disappr. I L.R. (1938) 2 Cal.337=42 C.W N. 1023.
——730=40 Bom L.R 513 Rel. 40 Bom L R. 548.
——782 Appr. I L R 1938 All. 363, Disc 1938 A L.J 252, Ref. 1938 O.W N. 318.
——792 Ref. I.L.R. (1938) 1 Cal. 75
27 Bom 1 (F.B) Ref. 40 P.L.R. 571.
——150 (F B) Expl. (1938) 1 M.L.J. 56
——162 Ref. 13 Luck. 20
——189 Ref I.L.R. 1938 All. 114.
——363 Rel. 40 P L R. 319.
——452=5 Bom L R 144 Rel. 40 Bom.L.R. 202.
——500 Rel. 40 P L R. 319.
——618 Foll 17 Pat. 268; Ref. 19 P L.T. 652
28 Bom. 8 Diss. 42 C W.N. 1174.
——11=5 Bom L R. 618 Ref 40 Bom.L.R. 1065.
——305 Foll. I L.R. 1938 Nag. 27; Ref. 40 Bom.L R. 88.
——432 Diss. 40 P.L.R. 801.

28 Bom. 461 Ref. I L R. 1938 Bom. 84.
——533 Ref. 42 C.W.N. 31.
——616 Foll. I.L.R. 1938 Nag. 308
29 Bom 29 Foll I.L.R. 1938 Lah. 624=40 P.L R. 530.
——300 Rel. I.L.R. 1938 Lah. 367.
——391 Ref. I.L.R. (1938) 1 Cal 21.
30 Bom 49 Appr. 65 I.A. 158= I.L R. (1938) 2 Cal. 295, (1938) 1 M L.J. 647.
——56 Rel. (1938) 1 M L J. 796.
——83 Foll. I.L R. 1938 Nag 308
——115 Ref. 40 P.L R. 768.
——205 Ref. 40 P L R 166
——240 Ref. 32 S.L.R. 106
——275 Ref. I L.R. (1938) 1 Cal 231.
——329 Foll. I.L.R. 1938 Nag. 409.
——348 Rel. I.L.R. 1938 Mad. 347.
——500=8 Bom L R 322 Dist. 40 Bom.L R. 418.
31 Bom 583=9 Bom L R. 560 Foll 40 Bom L.R. 418
——591 Rel 32 S.L R. 215.
——604 Appr 42 C W.N. 154, Ref I.L.R. (1938) 1 Cal. 146, 42 C.W.N. 441, 42 C. W.N 55, (1938) 1 M.L.J. 391.
——611=9 Bom L R. 967 Rel. 40 Bom.L R. 820.
32 Bom. 106 Dist. I.L R 1938 Nag 186.
——296 Foll. (1938) 1 M L.J. 450
——384 Rel. I.L.R. 1938 All. 829.
——386 Foll. 40 P.L.R 429.
——449 Diss 1938 O W.N. 676.
——499 Expl. & Affirm I.L.R. 1938 Bom. 679; 40 Bom. L.R. 559.
——560 Disc. I L.R. 1938 Lah. 341; Diss. 40 P.L.R. 196
——572 Ref 40 P L.R 128.
33 Bom 221 Ref. 32 S.L R. 87.
——373 Ref. I.L.R. 1938 All 904.
——393=3 I C 500 Dist 42 C. W.N. 768.
——423 Dist I L.R. (1938) 1 Cal. 290; Ref. 42 C.W.N. 129.
——483=11 Bom. L. R 674 Ref. 40 Bom.L R. 432
——509 Ref 42 C W.N. 345.
——644 Ref 1938 Rang L.R. 521.
34 Bom 72 Ref. I L.R. (1938) 1 Cal. 369; Ref. & Not Foll (1938) 2 M.L.J. 256.
——91=11 Bom L R. 1102 Dist. 40 Bom.L.R. 400.

34 Bom. 165 Dist. I.L.R. 1938 Bom. 155=40 Bom.L.R. 147.
——553 Disappr. I.L R. 1938 Nag. 255.
35 Bom. 29 Ref. I.L.R. (1938) 1 Cal 512.
——35 Disc 17 Pat. 191.
——79=8 I.C. 639 Ref. 40 P. L R. 768.
——139 Obiter appr. 40 Bom L. R. 571; Rel. I L.R. 1938 Bom. 529
——196=12 Bom. L. R. 860 Ref. 40 Bom.L.R. 889.
——388 Ref. 40 Bom.L.R. 521.
——425 Foll. I L R. 1938 Mad. 466=(1938) 2 M.L J. 651.
——487 Ref. I.L.R. 1938 Bom. 259.
——507 Ref. 42 C W.N. 560
36 Bom. 58=13 Bom L R. 975 Ref. 40 Bom L.R. 411.
——111 Foll. I.L.R. 1938 Bom 184
——135 Rel. 40 P.L.R. 319.
——156 Rel. upon I.L.R. (1938) 1 Cal 175.
——599=14 Bom. L. R. 592 Ref 40 Bom L R 432.
——638 Ref. 13 Luck. 162.
37 Bom. 42=14 Bom L R. 861 Ref 40 Bom.L R 411.
——76 Foll 42 C.W.N. 1191.
——101 Ref. 32 S L R 567.
——572=14 Bom.L R 1106 Dist. & Diss. 40 Bom.L R. 470; Expl I L R. 1938 Bom. 399
——595 Ref. I.L R. 1938 Bom. 259.
38 Bom. 41 Rel. 13 Luck. 397.
——116 Dist. I.L.R. 1938 Bom. 696.
——156 Not foll. 19 P.L.T. 104.
——177 Foll. 1938 Rang.L.R. 35
——309=16 Bom L.R 6 (F.B.) Dist. 40 Bom L. R. 571.
——631=A I R.1914 Bom. 299 Ref. 40 P.L.R 768.
——642 (F B) Rel. I.L.R. 1938 Lah. 229.
39 Bom 182 Foll. 1938 O.W.N. 513.
——399 Ref. I L.R. 1938 Nag. 330.
40 Bom 97=A I R. 1915 Bom 203 Ref. 40 P.L.R. 501.
——186 Ref. (1938) 1 M.L.J. 767.
——254=17 Bom L. R. 1140 Foll. 40 Bom.L R. 432.
——313 Foll. 40 P L R 24.
41 Bom 49 Foll. I.L.R. 1938 Mad. 466; Ref. (1938) 2 M.L.J. 651.
——347=19 Bom.L R. 69 Foll. 40 Bom L.R. 1029
——428 Ref. 42 C.W.N. 38.

41 Bom. 438 Ref. I.L.R. (1938) 1 Cal. 607.
——485 Foll. I.L.R. 1938 Mad 278
——625 Ref. I.L.R. 1938 Lah. 571
42 Bom. 172 Ref. 1938 Rang L.R. 104
——504=20 Bom.L.R. 661 Ref 13 Luck. 242, 40 Bom L.R. 964.
——635 Ref 13 Luck. 20.
43 Bom 37=20 Bom L.R. 779 Foll. I.L.R. 1938 Nag. 27, Ref 40 Bom L.R. 88.
——66 Foll. I.L.R. 1938 Nag 289.
——276 (P.C.) Dist. I.L.R. 1938 Lah 379, Foll. I.L.R. 1938 Nag. 302.
——507 Diss I.L.R. 1938 Nag 106
——575 Dist. 13 Luck 255.
——641 Dist (1938) 1 M.L.J. 444
44 Bom 82=21 Bom L.R. 952 Appr 40 Bom L.R. 238.
——474 (P.C.) Ref. I.L.R. 1938 Mad 91 (P.C.).
——508 Ref I.L.R. 1938 Bom. 84
——566=22 Bom.L.R. 717 Ref. 40 Bom L.R. 439
——591 Dist 13 Luck 323
——595=22 Bom L.R. 746 Ref I.L.R. 1938 Bom 259=40 Bom L.R. 104
——742 Ref 19 P.L.T. 594
——954=22 Bom L.R. 982 Overr. I.L.R. 1938 Bom 655=40 Bom.L.R. 324.
45 Bom. 241 Ref. 1938 Rang L.R. 580.
——416=22 Bom.L.R. 1383 Dist 40 Bom L.R. 521, 40 Bom L.R. 1029
——557 Rel I.L.R. 1938 Nag 255
——607 Ref 17 Pat 507=19 P.L.T. 309
——648 Diss. 13 Luck. 425.
——1137 Ref. I.L.R. 1938 Lah. 571.
——1170 Ref. I.L.R. (1938) 1 Cal 607=42 C.W.N. 38.
——1228 Rel I.L.R. 1938 Lah. 305.
——1256 Ref 17 Pat. 89=19 P.L.T. 372.
——1286 Ref 42 C.W.N. 1070, I.L.R. 1938 Bom. 752
46 Bom. 448 Dist I.L.R. 1938 All. 840, Ref. 1938 A.L.J. 867.
——535=23 Bom L.R. 1191 Ref. 40 Bom L.R. 521.
——541=24 Bom L.R. 69 Expl. & Appr. I.L.R. 1938 Bom. 679=40 Bom L.R. 559.
46 Bom. 544 Ref. I.L.R. (1938) 1 Cal 531.
——625 (F.B.) Cons. I.L.R. 1938 Bom. 98.
——657=24 Bom.L.R. 226 Foll 40 Bom L.R. 439
——773 Ref. 42 C.W.N. 422.
——833 Disc. 19 Pat L.T. 111 Ref. I.L.R. (1938) 1 Cal 512.
——961 Reviewed. 17 Pat. 15.
47 Bom. 28 Ref. (1938) 1 M.L.J. 344.
——37=24 Bom L.R. 838 Expl. & Appr. I.L.R. 1938 Bom. 679=40 Bom L.R. 559.
——174 Ref. 65 I.A. 32=I.L.R. 1938 Bom 249=(1938) 1 M.L.J. 161
——263 Foll I.L.R. 1938 Nag 308
——578 Ref 19 P.L.T. 549.
——597 Ref. (1938) 1 M.L.J. 686.
——621 Ref. I.L.R. (1938) 1 Cal. 607=42 C.W.N. 38.
——632 Ref 1938 Rang.L.R. 594.
——637 Ref (1938) 2 M.L.J. 256.
——643=25 Bom L.R. 474 Ref. 40 Bom L.R. 411
——678=25 Bom L.R. 361 Ref I.L.R. 1938 Bom 723=40 Bom L.R. 876
——699 Foll I.L.R. 1938 Nag 149, Ref I.L.R. (1938) 1 Cal 146=42 C.W.N. 212, 42 C.W.N. 55, I.L.R. 1938 Nag 149.
——721 Appr. I.L.R. 1938 All. 805, Ref. 1938 A.L.J. 813
48 Bom 384 Ref. I. L. R. 1938 Bom 259
——428 Ref. I.L.R. 1938 Nag 1
——442 Dist. I.L.R. 1938 Nag 409; Ref 17 Pat. 507=19 P.L.T. 309
——625 Rel. I.L.R. (1938) 1 Cal 531=42 C.W.N. 422.
49 Bom. 149 Ref. (1938) 1 M.L.J. 728.
——526 Ref. 1938 Rang L.R. 35, Rel. I.L.R. 1938 Bom. 465.
——642 Ref. I.L.R. 1938 All. 875=1938 A.L.J. 943
——892 Ref. 32 S.L.R. 87
50 Bom. 1 (F.B.) Ref. I.L.R. (1938) 1 Cal 531=42 C.W.N. 422.
——162 Ref. (1938) 2 M.L.J. 340.
——204 Ref. I.L.R. 1938 Nag 1.
——357 Ref. I.L.R. (1938) 1 Cal. 146=42 C.W.N. 55.
50 Bom 402 Ref. I.L.R. 1938 Mad. 466=(1938) 2 M.L.J. 651.
——674 Disc. 19 P.L.T. 511.
——683 Dist. I.L.R. (1938) 1 Cal 290, 42 C.W.N. 129.
——816=28 Bom.L.R. 1446 Foll. 40 Bom L.R. 202.
——839 Rel. 13 Luck. 340
51 Bom 78 Foll. 32 S.L.R. 185.
——167 Rel. I.L.R. 1938 Nag. 54.
——430 (F.B.) Foll. (1938) 2 M.L.J. 128, Ref. 40 P.L.R. 712
——450 Rel. I.L.R. 1938 All. 425
——487 Ref. I.L.R. (1938) 1 Cal 640
——725=54 I.A. 338 Ref. I.L.R. 1938 All. 823, 32 S.L.R. 567.
——771=29 Bom L.R. 900 Ref I.L.R. 1938 Bom. 64.
——971 Appr. I.L.R. 1938 All. 125.
——1019=29 Bom L.R. 1571 Ref. I.L.R. 1938 Bom. 723=40 Bom L.R. 876
——1010 Ref (1938) 2 M.L.J. 632, 19 P.L.T. 35.
52 Bom 160 Ref (1938) 2 M.L.J. 407.
——208=30 Bom L.R. 102 Treat as Overr I.L.R. 1938 Bom 649=40 Bom L.R. 512
——257 Ref 40 P.L.R. 501.
——313 Ref 19 P.L.T. 383.
——521 Appr I.L.R. 1938 All 363, Disc 1938 A.L.J. 252, Foll 40 Bom.L.R. 1010.
——526 Ref 1938 O.W.N. 318.
——640 Dist 1938 Rang L.R. 521.
——693 Ref. I.L.R. (1938) 1 Cal 607=42 C.W.N. 38.
——832 (F.B.) Ref 32 S.L.R. 567.
——904 Ref (1938) 1 M.L.J. 628 (F.B.).
53 Bom. 344 Appr. 1938 A.L.J. 382, 40 Bom.L.R. 787; I.L.R. (1938) 2 Cal. 295, (1938) 1 M.L.J. 647, Ref 42 C.W.N. 621, 19 P.L.T. 343.
——353=31 Bom L.R. 129 Ref. 40 Bom.L.R. 1001.
——419 Ref. 40 P.L.R. 678
——819 Foll. I.L.R. 1938 Nag. 268.
54 Bom 226 Dist I.L.R. 1938 Nag 348.
55 Bom. 97=32 Bom L.R. 1394 Ref 40 Bom.L.R. 989
——109 Dist 13 Luck. 242.
——231 Ref. 40 Bom L.R. 916=I.L.R. 1938 Bom 752, 42 C.W.N. 1070.

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30 Bom L R 859 Foll 40 Bom L. R. 272.
——1054 Ref 40 Bom L.R. 357
——1463 Ref 40 Bom L.R 400.
31 Bom L R 357 Dist. 40 Bom L. R. 956
——400 Foll 42 C W N. 748, Ref 40 Bom L.R 416
——1081 Ref. 40 Bom L.R 131.
——1307 Diss 19 P.L.T 537.
——1442 Ref. 40 Bom L.R 959
32 Bom L R 250 (P C) Ref 40 Bom L.R. 1015
——574 Foll. 40 Bom L.R. 927.
——1425 Ref 40 Bom L.R 1041
——1679 Ref. 40 Bom L R 1015
33 Bom L R 210 Foll 40 Bom L. R. 439, Ref. I L.R. 1938 Bom. 465.
——580 Foll 40 Bom L.R. 202
——703 Ref 40 Bom L.R 959
——874 Ref 40 Bom L R 58
——1029 Foll 40 Bom L R 407
——1109 Foll 40 Bom L R 929, Ref I L R 1938 Bom. 738
——1164 Ref. I.L.R. 1938 Bom. 403 = 40 Bom.L.R. 483.
34 Bom.L.R. 167 Foll 40 Bom L. L R 989.
——301 Ref 42 C W N. 729
——862 Cons 40 Bom L.R. 371
——996 Dist. 40 Bom L R 458.
——1001 Dist 40 Bom L.R. 458.
——1015 Foll 40 Bom.L R 115
——1087 Ref I L R (1938) 1 Cal. 290
——1131 Foll 40 Bom L.R 439, Ref. I L.R. 1938 Bom. 465.
35 Bom L R 150 Foll. 40 Bom L. R. 461.
——388 Ref. 40 Bom L R. 1005.
——578 Ref. I.L.R. 1938 Bom. 259 = 40 Bom.L.R. 104.
——722 Ref. 1938 Rang L.R 216; 42 C W.N. 38.
36 Bom L R 11 Ref. 40 Bom L. R 141
——156 Ref I L R 1938 Lah 582.
——339 Dist. 40 Bom.L.R 118.
——625 Foll 40 Bom L.R 381.
——807 Ref. 40 Bom.L.R. 964.
——814 Ref. 40 Bom.L.R. 964.
37 Bom L R 106 Appr. 40 Bom. L R. 297.
——130 (P.C) Ref. 40 Bom.L R. 713 (P C), 40 Bom L. R. 799
——209 Foll 40 Bom L.R 439
——230 Ref 1938 Rang L R 385.
——349 Foll 40 Bom L R 461
——376 Dist. 40 Bom L R 1015
——405 Ref. 40 Bom L R 964
——489 Ref. 40 Bom L R 411
——706 Ref 40 Bom.L.R 548
——931 Not Appr. 40 Bom.L R 19.

38 Bom L R 34 Ref 40 Bom L.R. 497.
——164 Foll 1938 Rang L.R. 63
——610 Dist 40 Bom L.R. 497.
——681 (P C) Ref. I.L.R. 1938 Bom. 179 = 40 Bom L.R. 75
——927 Ref. 40 Bom L.R. 559
——941 Disc I.L.R 1938 Bom 292 = 40 Bom.L.R. 334.
——971 Ref. 19 P.L.T. 246
39 Bom L R 309 (P C) Foll 40 Bom L.R. 158.
——540 Ref 40 Bom L.R 411, 40 Bom L.R 676.
——720 (P C) Foll 40 Bom.L R 132
——910 Foll. 40 Bom.L R 455
——917 Foll I L R 1938 Bom 445 = 40 Bom L R 371
——1019 (P C) Foll I L R 1938 Bom L.R 649 = 40 Bom L.R 512
40 Bom L R. 314 Ref. 40 Bom L. R. 320

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1 Bom H C R. (App) 51 Ref. I.L R (1938) 1 Cal. 369
——199 Ref. I L.R. 1938 Nag 91.
5 Bom H C R (App) 1 Expl 42 C W. N 230; Ref. I. L. R. (1938) 1 Cal. 476
——(Cr) 85 Ref 32 S L R 87
——(A C) 181 Ref I.L.R. 1938 Bom. 84, 40 P.L.R. 824.
7 Bom H C R 144 Dist. 40 Bom L.R. 158.
8 Bom H C.R 32 (Crown cases) Ref (1938) 2 M L.J. 416
9 Bom H C R 69 Ref I L R. 1938 Nag 91
——79 Ref I L R 1938 Nag 91
10 Bom H C R 204 Ref 32 S L R 567
11 Bom H C R 117 Ref 32 S L R. 567

I.L R CALCUTTA SERIES

1 Cal 11 Ref. I.L R 1938 All. 114
——133 (P C) Disc I L.R. 1938 Nag. 182.
——186 (P.C) Ref 40 P.L.R. 588
——207 Ref. 32 S L R. 185. 264 Foll I L R 1938 Nag. 308
——422 Appr I L R 1938 All 840, Ref 1938 A L J 867
2 Cal 233 (P C) Ref I L R 1938 Nag 54
——327 Ref 13 Luck 549.
3 Cal 192 (P C) Ref (1938) 1 M L J 676

3 Cal 198 (P.C) Disc. I.L.R. 1938 Nag 182, Foll I L.R. 1938 Nag 1; Ref I.L.R. 1938 Nag 10
——224 Ref. 40 P.L.R. 319.
——314 Foll. 17 Pat. 268, Ref. (1938) 2 M.L.J. 189, 19 P. L. T. 579.
——353 Disc. 19 P.L.T. 186.
——408 Cons. I.L.R (1938) 2 Cal 337 = 42 C.W.N. 1023.
——705 Ref I L.R. (1938) 1 Cal 290 = 42 C W N. 129
——806 (P C) Disc. I.L.R. 1938 All 922, Foll 1938 A. L.J. 955.
4 Cal 455 Ref. I L.R (1938) 1 Cal 652
——744 Ref. I L R 1938 All 192.
——897 Ref. (1938) 1 M L.J 834.
5 Cal. 71 Ref. (1938) 1 M L.J. 63.
——148 Disc. I L.R 1938 Nag 182, Foll I L.R. 1938 Nag 1.
——536 Diss I L R. 1938 All. 483 = 1938 A.L.J. 225.
——740 Dist 17 Pat. 398, Ref. 19 P.L.T 519
——792 Ref. I.L R. (1938) 1 Cal. 369.
——910 Disc 17 Pat 350 = 19 P.L.T 202.
6 Cal 8 (F B.) Dist 42 C.W.N 467, Ref 32 S L R 567
——171 Expl. I L.R. 1938 Lah 494
——620 Ref. 19 P.L.T. 51.
——707 Ref. I L R. (1938) 1 Cal. 75.
7 Cal 137 Ref. 42 C.W.N. 806.
——256 Ref. 40 Bom L.R. 174; 17 Pat. 268, 19 P.L.T. 579, (1938) 2 M L J. 189.
——288 Foll I L R 1938 Mad. 621, Ref (1938) 2 M L J. 613
——304 (P C) Foll I.L.R. 1938 Nag 27.
——499 Ref. 32 S.L.R 567.
——648 (P.C.) Ref. I.L.R. 1938 Nag. 382.
——703 Ref I.L.R. (1938) 1 Cal 563, Ref 42 C.W.N. 97.
——739 Foll. (1938) 1 M.L.J 526
8 Cal 51 = 8 I A. 123 (P.C.) Ref I.L R 1938 All. 922, 40 P. L R. 38.
——89 Disappr. I. L. R. 1938 All 342, Ref. I.L.R. 1938 Lah. 586, 43 P.L.R 494.
——302 Ref. 40 P.L R. 824.
——593 Ref. I.L.R 1938 Mad. 1050
——721 Ref. I.L.R. 1938 M 933.

8 Cal 756 Ref. 42 C.W N. 667.
——757 Ref. I.L.R. (1938) 2 Cal. 411; 32 S.L.R 124.
——766 Disc. 17 Pat. 350, Ref. 19 P.L T. 202.
——809 Ref. 13 Luck. 405
9 Cal. 53 Disc 19 P L T 297.
——100 Ref 19 P.L.T. 243.
——406 Ref. (1938) 1 M.L.J 325, Rel I.L.R. (1938) 2 Cal 243
——616 Dist (1938) 1 M L J 450.
——629 Ref. 42 C.W.N. 806.
——633 Ref 17 Pat 223.
——663 Rel. 40 Bom L.R. 548.
——698 Ref 42 C.W N 1102.
——861 Ref 40 Bom.L R. 422.
10 Cal 374 Dist (1938) 1 M.L J. 113.
——443 Foll I L R (1938) 1 Cal 21.
——549 Disappr. I L.R. 1938 All 342, Ref 1938 A. L J. 117
——557 Ref 40 P.L.R 712
——626 Foll I L R, 1938 Nag 1
——785 (P C.) Foll 40 Bom L R 900
——985 Appr 1938 A L.J. 834, Disc. I L.R 1938 Nag 182
——1035 (P.C) Rel I.L.R. 1938 Lah. 155
——1054 Ref. 42 C W.N. 783
——1097 Ref. 19 P L.T. 164
11 Cal 111 (P.C) Ref 40 P L.R 798
——338 Foll. (1938) 2 M L J 663.
——519 Dist. I.L.R. (1938) 1 Cal 1; Ref. 42 C.W.N. 1038.
——539 Rel. 40 Bom.L.R. 202.
12 Cal. 185 Ref I.L.R. (1938) 1 Cal. 21.
——522 Not Foll I.R.R. (1938) 2 Cal. 233.
——523 Cons. 42 C.W.N. 577.
——583 Ref. (1938) 2 M.L.J. 44
13 Cal. 3 Rel I.L.R. 1938 Nag. 54.
——13 Dist. I.L R. (1938) 1 Cal. 171; Ref. 42 C.W.N. 492.
——17 Rel 40 P.L R 662.
——104 (F B.) Dist. (1938) 2 M L.J. 283, Ref. 42 C.W.N. 72.
——155 Ref. 40 P L.R. 300.
——262 Ref. 1938 Rang L. R. 542.
——352 Ref I.L R. 1938 Lah. 494.
14 Cal 256 Ref. I L R (1938) 1 Cal 531 = 42 C.W N. 422.
——365 Ref. 1938 O.W N. 513.
——493 Foll. I.L.R. 1938 Nag. 1.
14 Cal. 633 Foll. 1938 Rang. L.R. 236
——636 (F B.) Ref. I. L. R 1938 All 697 = 1938 A.L.J. 724.
15 Cal. 109 Expl & Ref. I.L R. 1938 Bom. 119, Rel. I L.R. 1938 Bom 31.
——292 Ref 42 C.W.N. 695, Rel. I L R. (1938) 2 Cal. 250.
——329 Appl I.L.R 1938 All. 35.
——460 Ref. 42 C.W N. 445.
——533 Ref. 19 P L.T. 645.
——800 Ref. 42 C.W N. 560.
16 Cal. 40 Foll I.L.R. 1938 Nag. 382.
——121 Ref 1938 Rang L. R. 121.
——155 Ref 40 Bom.L.R. 447.
——250 Ref. 19 P L.T. 243.
——355 Ref. 17 Pat. 223.
——619 Foll 40 Bom L R. 188, Ref. I.L R 1938 Bom. 263.
——758 (P.C.) Foll 40 Bom.L R. 422.
17 Cal 301 Ref 42 C.W N. 967.
——436 (P.C) Rel. 1938 A L J 654, 32 S.L R. 106.
——574 Diss. 1938 Rang. L.R. 236, Ref 19 P.L.T. 51.
——580 Ref. I L.R. (1938) 1 Cal 531, Rel 42 C W N. 422
——610 Ref I.L R. (1938) 1 Cal. 688 = 42 C.W.N 270.
——631 (F B) Appr. I. L. R. 1938 Bom. 708, Diss. 40. Bom L R 676.
——826 Ref. 42 C W.N. 832
——911 Foll. 42 C.W.N. 359.
——968 Foll. 40 Bom L.R. 324, Ref. I L.R 1938 Bom. 655.
18 Cal 10 (P. C) Foll. 40 P.L.R. 95.
——23 (P. C.) Ref. I.L R. 1938 Nag 106.
——45 Ref 1938 Rang.L R. 360.
——151 Foll I L.R. 1938 Nag 255, Ref. I L R. 1938 Nag. 115.
——157 (P.C.) Foll. I L R 1938 Nag. 1; Ref I L R. 1938 Nag. 10.
——188 Ref I.L.R. 1938 Lah. 582
19 Cal 48 Ref. I.L.R. (1938) 1 Cal. 75.
——139 Rel. I L.R. 1938 All. 535 = 1938 A.L.J 495.
——203 Ref I L.R. 1938 Bom. 184.
——380 Disc. 19 P L T. 297.
——683 Foll. I.L R. 1938 Nag 136, 40 P L.R. 615.
——776 Ref. 42 C.W N. 1138.
20 Cal 79 Ref. 40 P.L.R. 556.
——93 Ref. 17 Pat. 507 = 19 P.L.T. 309
——116 Ref. 40 P L R. 319.
——241 Ref. 42 C.W.N. 523.
——245 Dist. 40 P.L R. 22.
——249 Disc. 19 P.L.T. 456.
——296 (P. C) Ref. 40 P.L R. 286.
——388 Foll. 40 P.L.R. 25, Ref. 17 Pat. 223.
——433 Ref. I.L.R. 1938 All. 761 = 1938 A.L.J. 715.
——579 Mentioned 42 C.W.N 276.
——687 Rel. 42 C.W.N 760
——708 Ref. 19 P.L.T. 570.
——762 Ref. I L. R. (1938) 2 Cal 411 = 42 C.W.N. 667.
——810 Ref. 1938 A. L. J. 803, I.L R. 1938 Bom. 184, 42 C.W.N. 1018, 1938 O.W. N. 688, (1938) 2 M.L.J. 239; Rel. 40 Bom.L.R. 1071.
——888 Ref. I.L.R. (1938) 1 Cal. 75.
21 Cal. 66 (P. C.) Ref. I. L. R. 1938 Lah 582.
——177 Ref. 40 P.L R. 92.
——832 Foll I L.R (1938) 1 Cal. 688 = 42 C.W.N. 270.
22 Cal 222 Ref. I.L.R. 1938 Bom 16, 40 P. L R. 819, Rel. 40 Bom L.R. 77.
——244 Ref 42 C.W.N. 913
——377 Foll. I L R. (1938) 1 Cal 98.
——410 Foll. 40 Bom L.R. 422, Ref. I L.R 1938 Bom. 454.
——425 Dist I L R. 1938 Bom. 273 = 40 Bom L R. 507
——451 Ref. I.L R. (1938) 1 Cal 531 = 42 C.W.N. 422.
——467 Dist. I L R. (1938) 1 Cal 171; Ref. 42 C.W.N. 492.
——519 Ref. 40 P.L R. 4
——581 Expl. I. L. R. (1938) 1 Cal. 35.
——619 Ref. 1938 O.W N. 67
——757 Ref. 40 P.L.R. 193.
——767 Ref. 1938 Rang. L. R. 176
——938 Foll 17 Pat. 315.
23 Cal. 44 Ref. 1938 Rang.L.R. 121.
——130 Not Foll I.L.R. 1938 Mad 278.
——325 Foll 40 Bom.L.R. 957.
——442 Ref. 42 C.W.N. 246.
——536 Foll (1938) 1 M.L.J. 113; Rel. 40 P.L R 319.
——592 Ref. 1938 Rang L.R. 480.
——699 Not foll. 42 C.W.N. 1059.
——790 Ref. 42 C.W N. 502.
——851 Foll. 17 Pat. 268, Ref. (1938) 2 M.L.J. 189 = 19 P. L.T. 579.

23 Cal. 884 (F B) Diss 40 P L.R. 196, Not foll. I L R. 1938 Lah. 341.
——950 Ref. 13 Luck 455
——973 Ref. I.L.R. (1938) 1 Cal. 98.

24 Cal 350 (F.B) Foll 17 Pat 252, Ref. 19 P L.T. 17.
——585 Ref. 1938 A L J. 690.
——584 Ref. 32 S L.R 507, Ref 32 S.L.R 106
——616 (P C) Ref. 40 P.L.R. 128
——668 Ref 1938 Rang L.R. 162
——677 Ref. 40 P L.R. 833
——692 Disc 19 P.L.T. 208
——711 = 1 C W.N 565 Ref 42 C.W.N. 560.
——832 Disap I L.R 1938 Nag. 41.
——834 (P C) Foll I L.R 1938 Nag 27.
——889 Foll 17 Pat 251 Ref 19 P L T 8

25 Cal 167 Ref 42 C.W N. 913.
——231 Foll. I L.R. 1938 All. 750, 1938 O.W.N. 591; Ref. 1938 A L.J. 565.
——354 Ref I.L.R. (1938) 1 Cal. 75.
——371 Ref. 1938 Rang L.R. 521.
——401 Dist. 1938 Rang L.R 417, Ref (1938) 2 M L J 469
——512 Disc 19 P L T 297
——555 Dist I L.R (1938) 1 Cal 290, Ref. 42 C.W N. 129.
——896 Ref. 40 Bom.L.R. 1015.

26 Cal. 194 = 3 C.W N 108 Ref. 42 C.W.N 913.
——281 Ref. 1938 Rang L.R. 243.
——338 Ref. I.L R. (1938) 1 Cal. 21.
——*449 = 3 C W N. 283 Ref* 42 C W N. 286.
——569 Ref 17 Pat 369 = 19 P.L T 268
——593 Ref. I.L R. 1938 All 840 = 1938 A.L.J 867.
——792 = 3 C W.N. 695 Ref. 42 C.W.N. 997.

27 Cal 190 Foll. I L R 1938 Mad 523
——320 Ref 1938 Rang L.R. 121
——452 = 4 C.W N. 504 Dist. 42 C W N 531
——*951 Ref I L.R 1938 All* 71; 40 P L.R 443
——1004 (P C) Ref 40 P.L R 240.

28 Cal. 571 Ref. I.L R 1938 All 789 = 1938 A.L.J. 689
——689 Not Foll. 19 P L.T. 104, Ref. I.L.R. 1938 Mad 348.

29 Cal 68 Ref. 42 C.W.N. 1058.
——*154 Foll. I.L.R. 1938 Nag* 206
——315 Cons. I.L.R (1938) 1 Cal 354, Dist. 42 C.W.N. 422, Distt. 42 C.W.N. 371, Rel I.L.R. (1938) 1 Cal. 531.
——385 Dist. 1938 A.L.J. 392 = I.L.R. (1938) 2 Cal 295, Ref. 65 I. A. 158 = 40 Bom. L.R. 757 = 19 P. L. T. 343, *42 C.W N 621 = (1938) 1* M L J. 647.
——461 Foll. I L.R. 1938 Nag 308.
——577 Dist. I.L.R. (1938) 2 Cal *266 Ref* 42 C.W.N 701.
——707 Disc. 19 P L.T 456, Ref I L R 1938 All, 184.
——782 = 6 C W.N. 652 Ref. 42 C W.N. 129, Rel. I L.R. (1938) 1 Cal. 290.

30 Cal. 339 Disc. 19 P.L.T. 456.
——369 Disc. 17 Pat. 350; Dist. 19 P.L.T. 202, Rel. I.L.R. (1938) 1 Cal. 531.
——394 Foll I.L.R. 1938 Lah 158
——440 Ref 40 P L R 685.
——575 Ref 32 S L R 8
——738 Ref 19 P L T 591
——*788 Ref I L R (1938) 2* Cal 411
——801 = 7 C W.N 610 Foll 42 C W N 1191.
——865 (P C) Dist I.L R. 1938 Nag. 308
——869 = 7 C.W N. 353 Foll 42 C.W N. 422.
——937 Diss 1938 Rang L.R 611.
——1021 (P C.) Ref 40 P.L.R. 403.

31 Cal 83 Ref. 40 P.L.R. 571.
——95 Ref I L.R. 1938 Lah 75
——*214 Ref* I.L R. 1938 All 904.
——249 Ref. I.L R. 1938 All. 634 = 1938 A.L.J. 504
——895 Dist 40 Bom.L R 418

32 Cal. 129 (P.C) Ref. 40 P L.R 319.
——296 (P C) Ref. 1938 A L J. 235.
——483 Ref. 13 Luck. 135.
——667 Ref 1938 Rang.L R 542.
——605 Ref. 1938 Rang L.R. 623.
——643 Ref. 42 C W.N 967
——654 Dist. 13 Luck 323
——861 Ref. 42 C W N 1237.
——1023 Reviewed 17 Pat 358.
——1077 = 9 C W.N 868 Ref 42 C.W.N 18.

33 Cal. 180 Dist. 17 Pat. 350; 19 P.L.T. 202.
——343 Ref (1938) 2 M.L.J. 688
——857 Ref. 1938 O.W.N. 722.
——1040 Foll (1938) 1 M.L.J. 351.
——*1047 (P C.) Appl. I.L.R.* 1938 Lah. 193 (F.B.). Ref. 40 P.L.R. 533.
——1119 = 10 C W.N. 705 Diss. 42 C.W.N. 110
——*1232 Ref. I L.R. 1938 Mad.* 1050
——1278 = 11 C.W.N. 107 Ref 42 C W.N. 18.
——1353 Ref I.L.R. 1938 Lah 628

34 Cal 216 Foll. I.L.R. 1938 Nag. 409.
——403 Ref. I.L.R. (1938) 1 Cal. 213.
——672 Foll. 1938 Rang.L.R. 35.
——787 Ref. I.L.R 1938 Lah. 582.
——913 Ref. I.L R. (1938) 1 Cal 35.
——954 Ref I L R 1938 Mad 1050

35 Cal 82 Disc 19 P L.T. 352, Rel. 42 C W N 169
——368 Ref & Rel. 19 P L.T 504
——431 Dist 1938 Rang L.R. 56, Foll 42 C.W N 888.
——551 Ref 19 P.L.T. 697.
——777 Rel 1938 A.L J 860.
——*837 Foll 13 Luck. 35*
——996 Appr. 40 Bom.L R. 100, Ref I.L.R. 1938 Bom 107.

36 Cal. 28 Dist. I L R. (1938) 1 Cal 476 = 42 C W.N 230
——*370 Ref. 42 C.W.N 246.*
——433 Disc. 19 P.L.T. 208.
——562 Diss. 1938 O.W.N. 676
——566 Dist. (1938) 1 M.L J 793
——745 Ref. 42 C W N 832
——769 Ref. 32 S L.R 215.
——896 Ref. 42 C.W.N. 246.
——936 Dist. I.L R. 1938 Nag. 402
——975 = 13 C.W N. 1084 Ref. *42 C W N. 1138.*

37 Cal 67 Rel. I.L R (1938) 1 Cal. 512.
——250 = 14 C W N 330 Dist. 42 C W.N 531.
——293 Foll. I.L R. 1938 Nag. 50
——*467 Rel. 17 Pat. 15.*
——578 Ref. (1938) 1 M.L J. 817.
——604 Foll. 1938 Rang.L R. 404.
——885 (P.C.) Ref. & Rel. 40 P.L.R 319

57 Cal. 949 Dist. I.L.R. (1938) 2 Cal. 221=42 C.W.N. 588.
——953=34 **C W.N. 121** Ref. 42 C.W.N 832.
——964=31 **C W.N. 238** Ref. 42 C.W N 266.
——1013 **(F.B)** Foll. 40 Bom. L R 164.
——1101=**34 C W N. 570** Foll. 42 C.W N. 971.
——1143 Ref 42 C W N. 1183.
——1210=**A.I R. 1930 Lah.** 459 Ref. 40 P.L R 669
——1228 Dist I L R (1938) 1 Cal 98.
——1336 Ref. 1938 Rang L R. 130

58 Cal. 66 Ref. I L.R. 1938 Mad. 1031
——174 Ref. 1938 Rang L.R. 611
——215 Ref I.L R. 1938 Lah. 188.
——281 Ref I L.R (1938) 1 Cal 196.
——402 Reviewed.19 P L.T. 21.
——539 Dist 42 C.W.N. 422; Rel I L.R. (1938) 1 Cal. 531.
——628 Foll. 1938 O.W N. 475.
——752 Ref. 40 Bom L R. 964.
——798 Rel. 17 Pat 189.
——850 Rel. 32 S L R. 67.
——897 Rel. (1938) 1 M.L J 670.
——1148 Ref. I.L R 1938 All 363=1938 A.L J. 252, 1938 O W.N. 318
——1235 Ref. 19 P L T. 594.
——1341 Dist. I.L R 1938 All. 350, Ref. 1938 A.L J. 159.

59 Cal. 8 Rel I.L R (1938) 1 Cal. 290, Ref. 42 C.W.N. 129
——68 Diss. I.L.R. 1938 Bom. 331=40 Bom L.R 297, 19 P.L T. 21.
——76 Ref 42 C W.N. 502.
——117 Ref. I.L R 1938 Lah. 97, 19 P L.T. 383, 40 P.L R 509.
——155 Ref. 19 P.L T. 658
——205=**A.I R 1932 Cal. 189** Ref. 40 P.L R. 303.
——337=**35 C W.N. 1294** Foll. 42 C.W.N. 152, Ref I.L R. 1938 Lah. 571.
——377 Ref. I.L R 1938 All 896
——388 Foll. I.L.R. 1938 Nag. 106, Ref 42 C W.N 72, 13 Luck. 397.
——576 Affirm & Foll 19 P. L.T. 169, Ref. I L.R. 1938 Nag. 115.
——636 Ref. 40 P.L R. 591.
——781 Rel I.L.R. 1938 Nag 409, Ref. 1938 Rang.L.R. 316; 19 P.L.T. 309=17 Pat. 507.

59 Cal. 911 Foll (1938) 1 M L.J 146; Ref I.L.R. 1938 Mad 533.
——961 Ref 32 S.L.R. 567.
——1057 Foll 40 Bom.L.R. 957
——1080 Dist. 42 C W.N. 1068 Ref. I L R. (1938) 2 Cal 523.
——1165 Foll. I L.R. (1938) 2 Cal 144.
——1202 Ref. I.L R. (1938) 1 Cal. 164.
——1226 Ref. I.L.R. 1938 Mad 25.
——1289 Dist I L.R. (1938) 1 Cal. 476=42 C.W.N. 230.
——1314 Foll. I.L.R. 1938 Nag 268; Not Foll. 17 Pat 499, Ref. I L R. (1938) 1 Cal 21.
——1334 Diss. 17 Pat. 252=19 P.L.T 17.
——1343 Rel. I L.R. 1938 All. 691
——1372 Ref 1938 Rang L.R. 542
——1399 **(P C)** Ref. I L R. 1938 Lah. 47
——1475 Rel. I L R. (1938) 2 Cal 14

60 Cal 54 Rel. 42 C W.N 469
——138 Mentioned 42 C W.N. 276.
——421 Rel 32 S L.R. 32
——427 Rel. I L R. (1938) 1 Cal 290, Ref. 42 C W N 129.
——431=**37 C.W N 450** Ref 42 C W.N. 994.
——538=**37 C.W N 181** Ref. 42 C.W.N 345.
——581=**37 C.W N 231** Ref 42 C W N 661.
——670=**A.I.R 1933 P C. 61** Foll 40 P L.R 857.
——701 Ref. I L.R. 1938 Nag 50
——783 Dist I.L.R. 1938 Nag 308.
——820 Ref. I L.R. 1938 Nag. 115.
——918 Ref. I.L.R. (1938) 1 Cal 531=42 C.W.N 422.
——1207 Expl. I L R (1938) 2 Cal. 103
——1236 Disc. I.L R 1938 Nag. 182
——1265 Foll. I L R 1938 Nag 344.
——1287=**37 C W. N. 1009** Ref. 42 C.W.N. 913.
——1401 Criticised I. L. R. (1938) 1 Cal. 280

61 Cal 72 Disc 19 P.L.T. 456.
——119 Ref I.L R (1938) 1 Cal. 652
——148 Foll. I.L.R. 1938 All. Ref. 1938 A.L J 558

61 Cal 168=**A.I.R. 1933 Cal. 800** Appr. 40 P.L.R. 870.
——324 Rel I.L R. (1938) Mad. 12.
——433 Ref. I L R. 1938 Mad 933; 1938 Rang.L.R. 521.
——450 Rel. I.L.R. (1938) 1 Cal. 476
——470 Ref. I L R. 1938 All. 823.
——607 **(F.B)** Expl. & Dist. (1938) 1 M.L J. 238, Foll 32 S.L.R. 185
——663 Ref. (1938) 1 M.L.J 514.
——670 Ref. (1938) 1 M.L.J 873.
——694=**A I R. 1935 Cal. 17** Ref. 40 P L.R. 447.
——796 Ref. I.L.R (1938) 1 Cal. 196
——814 Ref. 17 Pat. 89=19 P. L.T. 372.
——841 Appr. I L.R. 1938 All. 288=1938 A.L J 66, Diss. 42 C.W.N. 1212
——879 Appr. I.L.R. 1938 All. 350, Ref. 19 Pat.L.T. 393.
——975 Ref 40 P.L.R. 456.
——980=**38 C W N 838** Ref. I L R (1938) 1 Cal. 146.
——1023 Ref. I L.R. (1938) 1 Cal. 531=42 C.W.N. 422
——1041 Diss. I L R. (1938) 1 Cal 400=I.L.R. 1938 Nag. 149.

62 Cal 175 Modified 19 P.L.T. 125 (P.C); Ref. 42 C.W N. 1004.
——201 Foll. 40 Bom.L.R. 952.
——213 Diss. 1938 Rang.L R. 371; Ref (1938) 2 M.L J. 44
——257 Ref. (1938) 1 M L J. 487.
——312 Not Foll. 19 P.L.T. 104.
——337 Ref. 42 C.W.N. 129.
——377 Foll. I.L.R. (1938) 1 Cal. 290
——457 Ref I.L.R. 1938 Mad 1063.
——492 Ref. 1938 Rang.L.R. 216.
——510 Foll. 40 Bom.L.R. 995.
——629 Dist. (1938) 1 M.L.J. 670.
——655 Ref. 40 P L.R 767.
——659 Ref. 1938 Rang L.R. 166.
——677 Foll. I.L.R. 1938 Nag. 206.
——711 Disc. & Not Foll. 19 P.L.T 8; Ref. 1938 Rang. L.R 629
——918=**39 C.W.N. 488** Diss. 42 C.W N. 620.
——928 Diss. I.L R. (1938) 1 Cal. 98
——946 Ref. I.L.R. (1938) 1 Cal. 588.

62 Cal 956=29 C.W.N. 620 Ref 42 C W.N 129
——909 Dist 13 Luck 183
——1011 Ref I.L.R (1938) 1 Cal 476, Ref 42 C W.N 230
——1062 Dist I.L.R (1938) 1 Cal 531, Ref & Appr 42 C W N 422
——1035=29 C W N 1114 Ref 42 C W N 1272
63 Cal 208 Ref, I.L.R 1938 Nag 91
——523 Expl & Dist I.L.R (1938) 1 Cal 620=42 C W. N. 81.
——528 Foll 40 Bom L.R 455
——592 Reversed I.L.R (1938) 1 Cal 440
——733 Ref 40 P.L.R 215, Dist I.L.R 1938 Lah 417
——897 Disc I.L.R (1938) 1 Cal 668
——1008 Ref 1938 M.L.J 17
——1112 Diss I.L.R (1938) 1 Cal 95.
——1117 Expl & Dist. I.L.R. (1938) 1 Cal 164
——1172 Not Appr I L.R 1938 All. 288, Disc. 1938 A.L.J 66
——1208 Ref. I L.R (1938) 1 Cal 35
I L R (1937) 1 Cal 306 Ref I L R (1938) 1 Cal 290; Ref 42 C W N 129
——610 Expl I L.R 1938) 1 Cal. 672.
——637 *Ref I L.R 1938 Lah* 571
——653 Ref. 1938 Rang L R. 130
——781 Appr. I.L.R. (1938) 2 Cal. 30, Ref. & Expl. I.L.R. (1938) 1 Cal. 121.
I L R (1937) 2 Cal 201 Diss & Not Foll I L R 1938 Mad 25
——211 Diss I.L R (1938) 1 Cal 35
——315 Diss I L.R. (1938) 1 Cal 290.
——472 Ref I L.R. (1938) 2 Cal 155
——625=41 C W N 924 Foll. I.L R (1938) 1 Cal. 345.
I L R (1938) 1 Cal 256 Ref. I L. R (1938) *2 Cal. 155*
——345 Foll. I L.R (1938) 1 Cal. 597; Ref I L.R (1938) 2 Cal 155
——597 Ref. I.L.R (1938) 2 *Cal. 155*
——626 Ref I L R. (1938) 2 Cal 1.
I L R. (1938) 2 Cal 155 Ref I.L R (1938) 2 Cal 168

CALCUTTA WEEKLY NOTES

1 C W N. 459 Ref 42 C W.N 967
2 C W N 72 Ref 19 P L.T. 278
——122 Reversed 17 Pat 358
——197 Cons 42 C.W.N. 359
——250 Ref. (1938) 1 M L J 886
——501 Ref I L R 1938 Lah 494
——627 Reversed 17 Pat 369.
3 C W.N 62 Ref, 42 C W.N. 967.
——271 Ref, 42 C W N. 334
——635 Dist I L.R. (1938) 1 Cal 75
4 C W N 204 Ref, 42 C W N 649
——210 Ref 42 C W N 1059
——259 Ref 42 C W N 1059
5 C W N 83 Ref 42 C W N 721
——207 Appr I L R 1938 Mad 667=(1938) 1 M.L.J. 285; Ref 19 P.L.T. 455
——497 Ref. 42 C W.N. 967.
6 C.W.N. 202 Cons 1938 Rang L. R, 139
—— 218 Foll. 42 C.W.N 548, Ref. I L.R. (1938) 2 Cal 320
——403 Ref 40 P L.R 443
——791 Ref 42 C W N. 967
7 C W N 105 Ref I L R 1938) 1 Cal 512
——457 Ref I L R 1938 Nag 248
——590 Dist I L R (1938) 1 Cal 1.
8 C W.N. 359 Ref. I.L.R. 1938 Nag. 21
9 C W N. 474 Ref 17 Pat 369= 19 P.L.T 268.
——584 Ref. I.L.R. 1938 Lah 75.
——663 Dist 17 Pat 398, Ref 19 P L T. 519.
10 C.W N. 432 Dist. I.L.R (1938) 1 Cal 75
——535 Disc 17 Pat 191
——564 Not Foll (1938) 1 M L J. 728.
——847 Ref I.L R. 1938 Lah. 628.
11 C.W N. 212 Disc. 19 Pat.L T 555
——314 Ref. 42 C.W.N. 721.
——403=5 C L J. 315 Ref 42 C.W.N. 721.
——705 Ref. I.L R (1938) 1 Cal. 187.
12 C W.N. 241 Diss I.L R. (1938) 1 Cal. 400, 1938 Rang L R. 623, Ref. 42 C.W.N. 212.
——312 Ref. I.L.R (1938) 1 Cal 53.
——528 Ref. 42 C.W.N. 913.
13 C W N. 307 Ref. 42 C.W N. 913.

13 C W N 250 Ref. 1938 O.W.N. 433 Appr. I L.R. 1938 All. 513, Diss. 1938 A L.J 313.
——358 Ref. 13 Luck 495.
——533 Ref. 42 C.W N. 256.
14 C W.N. 12 Ref. 1938 Rang L. R. 102
——*96 Ref (1938) 2 M L.J. 760.*
——463 Dist. I L.R. (1938) 1 Cal 75
——759 Foll 1938 O.W.N. 450.
——932 Ref I L.R. (1938) 2 Cal 411=42 C W N. 667; Ref I L.R. 1938 Nag 106
——971=12 C L J. 101 Ref 42 C.W N 455.
15 C W.N 706 Ref. 42 C.W.N 913
16 C W N 20 Ref 42 C W.N. 1174
——252=14 C L J. 467 Ref. 42 C.W.N. 359
——327 Diss 1938 Rang L.R. 623; Ref. I.L.R. (1938) 1 Cal. 400=42 C W.N. 212
——317 Foll 42 C.W N 1038.
——567 Disc. 19 P L T 555
——715 Foll 17 Pat 400, Ref 19 P L.T. 594
——731 Foll 42 C.W N. 1170
17 C W N 73 Ref 42 C W.N. 445
——238 Ref 19 P L T 542
——625 Foll I L R (1938) 1 Cal 413
——833 Ref 42 C W N 334
18 C W N 445 Ref I L R (1938) 1 Cal 607=42 C W.N 38
——466 Disc 19 P.L T 456
——539 Ref. 42 C.W N. 485.
——598 Ref 19 P L T 658
——617 Ref. 19 P L T 579
——929 Foll I L R 1938 All 125, Ref 1938 A L.J 23.
——1136 Foll. (1938) 1 M L.J. 146; Ref I L.R 1938 Mad 533
——1325 Ref. 42 C.W N 883; Cons I L R (1938) 2 Cal. 482
19 C W N 64 Ref. I L R 1938 Mad 12
——614 Foll. (1938) 2 M.L.J. 402.
——1197 Ref I.L R (1938) 1 *Cal. 21.*
——1295 Ref. 42 C.W N. 649.
20 C W.N. 149 Ref. I.L.R. (1938) 1 Cal 607=42 C.W.N 38.
——154 (P C) Ref 42 C W.N. 345
——350 Ref. 19 P.L T 95
——522 Appr 19 P L T. 250
——749 Ref 42 C W N. 967.
——789 Diss. 1938 Rang L R. 586
——957 Ref I L R (1938) 2 Cal 328
——833 (P C) Foll I L R 1938 Mad 586
——1005 Ref 42 C.W.N 771

21 C.W.N. 88 Ref. 42 C.W.N. 721.
——117 Ref. 42 C.W N 761.
——344 Cons I.L.R. (1938) 1 Cal. 509=42 C.W.N. 64
——375 Ref. I.L.R. (1938) 2 Cal. 411=42 C.W.N. 667.
——427 Dist 17 Pat 150
——482=25 C L J. 238 Dist 42 C W.N. 18
——514 Diss 42 C.W.N. 152, 1938 Rang.L.R. 635.
——620 Ref. (1938) 1 M L.J 610
——688 Ref 19 P.L T. 485.
——835 Ref. 13 Luck 162
——1129 Foll. I L R (1938) 1 Cal 75

22 C W.N. 89 Ref. 42 C W.N. 304
——163 Dist I L R. (1938) 2 Cal 221=42 C.W.N. 588.
——279 Disc I L R. 1938 All 288=1938 A L.J. 66
——522 Ref I.L.R. (1938) 1 Cal 607=42 C.W.N. 38.
——540 Concur. 40 Bom L R 676
——657 Dist. 42 C.W.N. 188.
——713 Ref. I L R. (1938) 2 Cal 507
——760 Ref I.L R. (1938) 1 Cal. 512.
——904 Ref. 42 C.W.N. 637.

23 C.W.N 91 Ref 42 C.W.N. 445
——283 Ref. I.L.R. (1938) 1 Cal. 607=42 C.W.N. 38.
——769 Rel. I.L.R. (1938) 2 Cal 275

24 C W.N. 463 Ref. I L R. (1938) 1 Cal. 607=42 C.W.N. 38
——599 Ref. I.L.R (1938) 1 Cal. 187.
——752 Diss 13 Luck 344 Ref I.L.R. (1938) 1 Cal. 652.
——879 Ref. 42 C.W.N 806.
——1001 Dist. I.L.R. (1938) 1 Cal. 685.

25 C.W.N. 204 Mentioned 42 C. W.N. 276
——220 Rel. I.L.R. (1938) 1 Cal 563, Ref. 42 C.W N. 97.
——555 Ref 1938 Rang L.R. 580.
——768 Rel. I I.R (1938) 2 Cal. 411, Ref 42 C W.N. 667.
——813 Ref. 40 P L R. 300, Rel 13 Luck. 323.
——847 Rel. (1938) 1 M.L.J 574.
——905 Ref 42 C.W.N 38.

26 C.W.N 406 (P.C.) Rel (1938) 1 M L.J. 574.
——495 Ref 19 P.L.T. 202.
——514 Ref 42 C.W.N. 1212
——587 Affim 39 C.L.J. 347; Ref. 42 C.W.N. 445.

26 C. W. N. 771 (P.C.) Dist. 17 Pat. 499, Foll I.L R. 1938 Nag 268
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——940 Ref. 42 C.W N. 367.

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——174 Ref 42 C.W.N. 345
——208 Ref 42 C.W.N. 497.
——210 Rel. I.L.R 1938 Nag. 283.
——542 Ref. 42 C W.N. 375, (1938) 1 M.L J. 193
——710 Ref. I.L R. 1938 Mad. 275=(1938) 1 M.L.J. 54
——740 Ref. 19 P.L.T. 309.
——897 Ref. 42 C.W.N. 107.

28 C W.N. 20 Ref. I. L. R (1938) 1 Cal 512.
——23 Appl. 19 P.L.T. 542
——92 Ref. 42 C.W.N. 1065.
——170 Ref I L R (1938) 1 Cal 636.
——755 Rel. I.L.R. (1938) 2 Cal 22 Cons 42 C W N. 316
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29 C W N 112=A. I R. 1924 P.C. 44 Ref 40 Bom.L R. 1041.
——148 Ref I.L R 1938 Nag 151.
——496 Ref I.L.R. (1938) 2 Cal. 320.
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——117 Dist. 13 Luck. 230.
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——160 Ref. I L.R 1938 Mad 888.
——208 Rel. I L.R (1938) 1 Cal. 531.
——372 Ref. 17 Pat. 507=19 P.L.T. 309.
——434 Cons 42 C.W.N. 519.
——778 Ref. 42 C.W.N. 913.
——1160 Ref. 42 C.W.N. 47.

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35 C.W.N. 53 Disc I.L.R. (1938) 1 Cal. 450.
——188 Dist. 1938 Rang L.R. 143.
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——997 Ref. 1938 Rang.L.R. 166.
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——1298=54 C.L J. 293 Ref. 42 C.W.N. 1032.

36 C.W N. 4 (P.C.) Dist. 17 Pat. 154=19 P.L.T. 500.
——121 Rel I.L R. (1938) 2 Cal. 103; Ref 42 C.W.N. 391.
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——238 Ref. 42 C.W.N. 560.
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——784 Dist. I.L.R. (1938) 2 Cal 134=42 C.W.N. 443
——838 Appr. 42 C.W.N. 55
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——690 Ref. 42 C.W.N. 110 Ref. I.L.R. 1938 2 Cal 30
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——140 Obs. & Not Foll. I.L.R. (1938) 2 Cal 418, Dist. 42 C.W.N. 793
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6 C.L.J. 134 Dist. I.L.R. 1938 Lah 155.
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9 C.L.J. 116 Dist. I.L.R. (1938) 1 Cal 75.

10 C.L.J. 499 Foll. 42 C.W.N. 649

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16 C L J. 217 Ref. I L.R. (1938) 1 Cal. 607.
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18 C L J 29 Ref. 42 C.W.N. *967.*
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19 C.L J. 251 Foll. I.L.R. (1938) *1 Cal. 413*
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40 C L J. 160 Ref. I L R. (1938) *2 Cal 411=42* C.W.N *667.*
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50 C L.J. 181 Dist. I.L.R. (1938) 2 Cal 221=*42 C.W N 588*
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21 W.R 1 Ref. I.L.R 1938 Mad. 933.
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——391 (F B) Appl 40 P L.R 198 Ref 40 P L R. 128
——531 Dist I L.R 1938 Nag. 302, Ref. 40 P L R 204
9 Lah. 120 = 29 P L.R. 151 Ref. 40 P.L.R. 781.
——149 Ref I L R 1938 Nag. 308
——308 Rel I L.R. 1938 Lah. 125 = 40 P L.R 461.
——501 (F.B) Foll. I L.R. 1938 Nag. 268.
10 Lah 7 Foll I L R 1938 Nag 370 Ref 40 P L R 273
——85 = 29 P L.R 654 Ref. 40 P L R 781
——161 Rel 32 S L R 106
——203 Ref 40 Bom L R 422.
——531 Dist I L R 1938 Bom 64
——581 Ref I.L.R. 1938 Lah 485 ; 40 P L.R. 267
——596 (F B.) Appr. 42 C W.N 873, (1938) 2 M L J. 115, Ref 1938 A.L J 754, I L.R. 1938 Bom 487, 40 Bom L R. 854.
——623 Ref. 40 P.L R 591
——657 Expl & Dist. I L R 1938 M 25, Ref I L R 1938 Bom 752, 42 C W N 1070
——709 = 30 P L R 717 Ref 40 P L.R 777.
——737 Expl & Dist I L.R 1938 Mad. 1031.
——745 = 30 P.L R 239 Ref 40 P L R 193
——748 = 30 P L R 226 Ref 40 P L R. 193
——*750 Dist.* I L R (1938) 2 Cal 320.
——852 Dist I L R 1938 Lah 258 = 40 P L.R 148
11 Lah 111 Ref 40 P L R 74
——172 Foll 40 P L R 305.
——199 = 31 P L R 145 Rel 40 P L R. 655.
——251 Rel. I.L.R 1938 Nag. 54
——258 Ref. 40 P.L.R 97.

16 C.L J. 217 Ref. I L.R. (1938) 1 Cal. 607.
——385 Dist. 17 Pat. 150
17 C L J 66 Dist I L.R. (1938) 1 Cal. 75
——75 Foll. I L R. 1938 All 252
——372 Dist 42 C W N. 378.
——399 Foll 17 Pat. 268, Ref. I.L R 1938 Mad 933.
18 C L J 29 Ref. 42 C.W.N. 967.
——53 Ref 42 C W N. 979.
——541 Foll. 42 C W.N 405
19 C L J 251 Foll I L R (1938) 1 Cal. 413
——614 Cons I.L R. (1938) 2 Cal 41
20 C L J. 107 Ref 42 C.W N. 637
——210 Ref. 42 C W N 913.
22 C.L J 404 Ref (1938) 2 M.L. J 623
——419 Dist 17 Pat 398.
24 C L J 60 Ref 42 C W.N. 913.
——88 Ref (1938) 1 M.L J. 610
27 C.L J 96 Ref (1938) 2 M.L.J 76
——110 Ref 42 C W.N 502
——605 Dist. I.L R. (1938) 1 Cal 206
28 C L J. 4 Ref 42 C.W.N 345.
——197 Foll, (1938) 1 M.L.J. 806.
——271 Ref I L R. (1938) 1 Cal 75
29 C L J. 44 Ref 19 P L T. 485
30 C L J 56 Rel. (1938) 1 M L J. 298
——118 Expl 17 Pat. 128 ; Ref. 19 Pat L.T. 428.
——522 Foll. I.L R 1938 All. 192
31 C.L J. 495 Rel. 32 S L.R 106.
32 C L J 77 Ref. 42 C.W.N. 334.
——137 Ref. 42 C W.N. 1191.
——236 Rel. 32 S L R 106
33 C.L J 382 Ref. I L R. (1938) 1 Cal 75.
34 C.L J. 319 Ref. 42 C.W.N. 1102
35 C L.J. 14 Dist. 42 C.W N. 866 ; Ref. I.L.R. (1938) 2 Cal 41
——78 Ref. (1938) 1 M.L J. 769.
——146 Diss. I L R (1938) 2 Cal 559
——161 Mentioned 42 C W.N 276.
——210 Ref 42 C.W.N 913.
——303 Ref. 42 C.W N 637
36 C L.J. 124 Dist. 42 C.W.N 403
——140 Ref. & Dist. 40 Bom L. R 166.
36 C L.J. 205 Disappr. I.L R 1938 All. 922 ; Ref. I.L.R (1938) 1 Cal 512
——228 Ref. I.L R. (1938) 2 Cal. 320
——373 Foll I L R. 1938 Mad 523
——484 Rel (1938) 1 M L.J. 796.
——491 Ref. 42 C W.N. 1059.
37 C.L J 538 Expl 42 C.W.N. 832.
38 C L J. 114 Foll. I L R 1938 Mad 523
39 C L J. 40 Ref. I L R. (1938) 2 Cal 411=42 C W.N. 667.
——151 Ref. I L.R. (1938) 1 Cal 290=42 C W.N. 129.
——522 Diss I L R. (1938) 2 Cal 345, Ref 42 C.W.N 612.
——585 Reviewed 17 Pat 358.
40 C L J. 160 Ref. I L R. (1938) 2 Cal 411=42 C.W.N. 667
41 C L J. 142 Ref I.L.R (1938) 2 Cal. 221.
——607 Dist. 42 C.W N. 1170, Foll 42 C.W.N. 888
43 C.L J. 83 Ref 19 P.L T. 594
44 C L J 475 Ref 42 C W.N. 18.
48 C L J. 577 Disc 19 P.L.T 456
49 C L J. 12 Ref I L.R. (1938) 1 Cal 607=42 C.W.N. 38.
——89 Ref 42 C.W N 832.
——538 Diss 17 Pat. 84.
50 C L J. 181 Dist. I L R. (1938) 2 Cal 221=42 C.W N 588.
——397 Ref. I.L R. (1938) 2 Cal 14, 42 C W N. 457
51 C L J. 25 Ref. 19 P.L.T 570
52 C L J. 365 Ref. 42 C W.N. 677, (1938) 1 M.L.J. 834.
53 C.L J. 526 Dist. 42 C W N. 994.
54 C.L J. 220 Ref 42 C.W.N 107.
——353 Ref. 42 C W.N. 304
——596 Rel 17 Pat. 189
55 C.L J. 82 Ref. 17 Pat 223.
——107 Foll. 1938 Rang.L R 102
56 C L J. 185 Ref. 42 C W.N 422
58 C L J. 38 Ref. I L R. (1938) 1 Cal 231.
60 C L J. 44 Ref. 19 P L.T. 119
61 C L J. 548 Ref. I.L R. (1938) 1 Cal. 164=2 C.W N. 755.
63 C L J 117 Ref 42 C.W.N. 975.
——152 Diss I.L R (1938) 2 Cal. 418, Ref 42 C.W.N 793.
64 C L J. 558 Foll I L R (1938) 1 Cal 607.
——768 Rel. 42 C.W.N. 38
65 C.L J. 583 Dist. 42 C.W.N 866
67 C L.J. 82 Ref. 42 C W.N. 1232

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(1863) Beng. L R. (Supp. Vol) 35 Ref. 42 C.W.N. 300
——459 Rel I.L.R. (1938) 1 Cal. 290
1 Beng L R. (O S) Criminal 15 Ref 32 S. L.R. 185.
——91 (F.B.) Ref. 1938 A.L.J. 553.
3 Beng.L.R. 31 (F.B.) Ref (1938) 1 M.L J. 710
——57 (P.C.)=13 M.I A 209 Rel I.L R (1938) 2 Cal 492
4 Beng.L R 11 Foll. 1938 A L.J. 955, Ref I L.R 1938 All 922
——134 Ref. 40 P.L.R 319.
5 Beng.L R. 345=13 W R. 75 Ref. 42 C.W N. 77.
——619 Dist 1938 Rang L R. 594
7 Beng L R. 213 Disc. I.L R. 1938 Nag 182.
8 Beng L R 433 Appl. 40 Bom. L R 658.
11 Beng L R 321 (P.C) Ref. (1938) 2 M.L J. 340
——405 Ref. I L.R. (1938) 1 Cal. 187, I.L.R. 1938 Mad 933
12 Beng L R 90 Foll. I.L R. 1938 Nag. 1.
13 Beng L R 383 Ref. I.L.R. (1938) 2 Cal 233, 42 C.W. N. 577.
15 Beng.L R 142 Disc. I.L R. 1938 Nag 382.
——167 Foll. I.L R. 1938 Bom. 184
21 Beng L R 558 Foll 13 Luck. 1.

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(1864) W R 185 Ref 65 I.A. 119; (1938) 1 M L J. 458= I L R 1938 All 314, Rel. 40 Bom.L.R 735.
1 W R. 321 Dist. 17 Pat. 398; Ref 19 P L.T 519
——351 (F.B.) Ref. 42 C W. N. 300
5 W.R. (Cr.) 80 Ref. 42 C.W.N. 129
——(P C) 98 Ref. 13 Luck 65.
6 W R 199 Ref 19 P L T. 519.
——303 Disc. I L.R. 1938 Nag. 182.
7 W R. (F.B.) 377 Ref. 65 I A. 219, 13 Luck. 494
8 W.R 62 Ref. 42 C.W.N. 913.
——171 Expl. 42 C.W.N. 391 ; Foll. I.L R. (1938) 2 Cal. 103
9 W.R 152 Foll (1938) 2 M.L.J. 822.

9 W.R. 230 Ref. I.L.R. 1938 Nag 54
——505 Ref. 42 C.W.N. 1237
——520 Ref. 32 S.L.R. 162
10 W.R. 15 Ref. 42 C.W.N. 913
——222 Foll. I.L.R. 1938 Bom 184.
——401 Foll 17 Pat. 398, Ref. 19 P.L.T. 519
12 W.R. (O J) 25=4 B.L.R. 72 (O.J.) Ref. (1938) 2 M.L.J. 511
——329 Ref (1938) 1 M.L.J. 73
——495 Reviewed 17 Pat 358
——518 Dist. (1938) 2 M.L.J. 1072
14 W.R. (Cr) 173 Ref. I.L.R. (1938) 1 Cal 531
——174 Ref 42 C.W.N. 97
15 W.R. 274 Reviewed 17 Pat 358.
——285 Ref 13 Luck 629
——531 Dis. 42 C.W.N. 1038
16 W.R. P.C. 5 Ref. I.L.R. 1938 1 Cal 761
——37 Ref 42 C.W.N. 31.
17 W.R. 275 Ref 40 P.L.R. 64.
——509 Ref. 42 C.W.N. 97.
18 W.R. 59 (Cr) Ref. I.L.R. (1938) 1 Cal. 290, 42 C.W.N. 129.
——91 Foll 42 C.W.N 1191.
——163 Ref. 40 P.L.R 556
——(P.C.) 166 Ref. 42 C.W.N 1059
——(P.C.) 185 Ref. 40 P.L.R 243
19 W.R. 69 Ref. 42 C.W.N. 31.
——(P.C.) 315 Disc. I.L.R. 1938 Mad 609
21 W.R. 1 Ref. I.L.R. 1938 Mad. 933
22 W.R. 29 Ref. 42 C.W.N. 913.
——231 Ref 42 C.W.N 359.
23 W.R. 52 Foll I.L.R. 1938 Nag. 21 Ref 19 P.L.T 511
24 W.R. (Cr) 30 Ref I.L.R. (1938) 1 Cal 290
• 24 W.R. (Cr.) 41 Ref 1938 Rang L.R 121

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1 C.L.R. 21 Ref. 32 S.L.R. 185.
2 C.L.R. 323 Ref. I.L.R. (1938) 1 Cal 21.
[1878] 3 C.L.R. 285 Ref. I.L.R. (1938) 1 Cal. 21.
4 C.L.R. 92 Ref & Rel I.L.R. 1938 All. 236, 1938 A.L.J. 113.
——105 Dist I.L.R. (1938) 1 Cal. 290, Ref. 42 C.W.N. 129
5 C.L.R. 253 Ref. I.L.R. (1938) 1 Cal. 692, 17 Pat. 223
7 C.L.R. 575 Disc. 19 P.L.T. 461

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1 Lah 117 (P.C.) Dist. 40 P.L.R. 477.
——192 Diss. I.L.R. 1938 All 528=1938 A.L.J. 444
——234 Mentioned (1938) 1 M.L.J 514
——284 Ref. 40 P.L.R 29.
——322 Ref 13 Luck. 246
——363 Ref. I.L.R. 1938 Lah 498, 13 Luck. 425
493 Ref. 13 Luck. 20
——540 Ref. 40 Bom L.R. 1041.
2 Lah 13 Ref. 13 Luck. 334.
——40 (P.C.) Foll. I.L.R. 1938 Nag 233
——63 Ref I.L.R. 1938 Lah 173
——195 Ref I.L.R. 1938 Lah 271=40 P.L.R. 153
——313 Ref. I.L.R. 1938 Lah 447 Ref 40 P.L.R. 110.
3 Lah 7 Ref 40 P.L.R. 473.
——48=1 P.L.R. 1922 (P.C.) Ref. 40 P.L.R. 508.
——84 Dist 40 P.L.R. 111.
——127 (P.C.) Ref I.L.R. 1938 Nag 151.
——362=A.I.R. 1922 Lah 433 Ref. 40 P.L.R. 672
4 Lah. 61=A.I.R. 1921 Lah. 84 Ref. 40 P.L.R 850, Ref. I.L.R 1938 Lah 603
——350 Cons. I.L.R (1938) 1 Cal 369
——390 Ref I.L.R (1938) 1 Cal 531=42 C.W.N. 422
5 Lah 34 Ref. I.L.R. 1938 Lah. 485=40 P.L.R. 267.
——38 Ref. 40 P.L.R. 403.
——54=A.I.R. 1921 Lah 448 Diss. 40 P.L.R. 857.
——114 Rel. 40 P.L.R 33
——192=A.I.R. 1924 P.C. 121 Ref. 40 P.L.R 616
——212 Foll 40 P.L.R 676
——288 (F.B.) Ref 40 P.L.R. 69, Rel I.L.R. 1938 Lah 289
——406 Ref. 40 P.L.R. 193
——429 Ref. 1938 O.W.N. 40.
6 Lah 1 (P.C.) Dist. I.L.R. 1938 Lah. 246, Ref. 40 P.L.R 10
——*56 Foll. 17 Pat. 9.*
——134 Ref. I.L.R. 1938 Lah. *271=40 P.L.R 153*
——206 Dist. 40 P.L.R. 245, Ref. 40 P.L.R 126, Rel. I.L.R. 1938 Lah 332
——380 Ref. 40 P.L.R. 518.
——405=26 P.L.R. 695 Ref 40 P.L.R. 188
——415 Ref 19 P.L.T. 104
——502=A.I.R. 1925 P.C. 267 (P.C.) Ref. 40 P.L.R. 447
——541 Ref 40 P.L.R 468
——544 Ref. 40 P.L.R. 280.

7 Lah 40=27 P.L.R. 200 Dist. 40 P.L.R. 791
——50 Foll. I.L.R. 1938 Nag. 305.
——81 Foll. 17 Pat. 15=19 P.L.T. 432
——91 Ref. 19 P.L.T. 86
——173 Overr. (1938) 2 M.L.J. *323; 1938 O.W.N. 715.*
——201 Ref. I.L.R. 1938 Lah. 10
——390 Dist. I.L.R. 1938 Bom. 64.
——412 Rel. I.L.R. 1938 Nag. 308.
——564 Ref. I.L.R. 1938 Lah. 603=40 P.L.R. 850
8 Lah 354 Ref I.L.R. 1938 Lah. 359
——391 (F.B.) Appl. 40 P.L.R 198, Ref 40 P.L.R. 128
——531 Dist. I.L.R 1938 Nag. 302, Ref. 40 P.L.R 204
9 Lah. 120=29 P.L.R. 151 Ref. 40 P.L.R. 751.
——149 Ref. I.L.R. 1938 Nag. 308.
——308 Ref I.L.R. 1938 Lah. 125=40 P.L.R. 461
——504 (F.B.) Foll. I.L.R. 1938 Nag 268.
10 Lah 7 Foll I.L.R. 1938 Nag 370 Ref. 40 P.L.R 273
——85=29 P.L.R. 654 Ref. 40 P.L.R 781
——161 Rel 32 S.L.R 106
——263 Ref 40 Bom L.R 422.
——531 Dist I.L.R 1938 Bom 64
——581 Ref. I.L.R. 1938 Lah. 485, 40 P.L.R 267.
——696 (F.B.) Appr. 42 C.W.N 873, (1938) 2 M.L.J 115, Ref 1938 A.L.J 754, I.L.R 1938 Bom 487, 40 Bom.L.R. 854
——623 Ref 40 P.L.R 591.
——657 Expl & Dist. I.L.R 1938 M 25, Ref. I.L.R 1938 Bom 752, 42 C.W.N. 1070
——709=30 P.L.R. 717 Ref 40 P.L.R 777.
——737 Expl. & Dist. I.L.R 1938 Mad. 1031.
——745=30 P.L.R. 239 Ref. 40 P.L.R 193.
——748=30 P.L.R. 226 Ref. 40 P.L.R. 193
——750 Dist. I.L.R. (1938) 2 *Cal 320.*
——852 Dist. I.L.R. 1938 Lah 258=40 P.L.R. 148
11 Lah 111 Ref 40 P.L.R 74
——*172 Foll 40 P.L.R 305*
——199=31 P.L.R. 445 Rel 40 P.L.R. 655
——251 Rel. I.L.R 1938 Nag. 54
——258 Ref. 40 P.L.R. 97.

11 Lah 315 = A I R. 1930 Lah. 700 = 31 P L R. 533 Ref. 40 P.L R. 672.
——402 Diss 1938 Rang L.R 580
——424 = 31 P.L R 233 Ref 40 P L R. 616
——427 = 31 P L R. 644 Rel 40 P L R 292.
——657 (P C) Foll. I.L.R. 1938 Mad 586
——716 = 8 P R. 1905 (Rev.) Dist. 40 P.L.R. 240.
12 Lah 111 Foll. 40 P.L R 111
——129 (F B) Ref. I L R. 1938 Lah. 477 = 43 P L R. 308
——194 Rel I L R. 1938 Lah. 502
——359 = 32 P.L R. 504 (F.B.) Ref 40 P L R. 164
——385 Ref. I.L R. 1938 Mad. 988.
——495 Foll I L.R. 1938 Nag 136.
——671 Ref. I.L R. 1938 Lah. 103
——741 Ref 19 P.L T. 511.
——757 Foll I L.R. 1938 Mad. 270 = (1938) 1 M L J. 11 (F B.)
——763 = 32 P.L R 350 Ref. 40 P L R 613
13 Lah 70 Ref 40 P L.R. 273.
——126 Rel I L.R. 1938 Lah. 173.
——180 = 32 P.L R 446 Foll. 40 P L R. 676.
——259 Dist. 40 P.L.R. 833.
——276 Ref. 40 P.L.R. 29.
——342 (F B) Foll. I.L R. 1938 Bom 331 = 40 Bom L. R. 297 (F.B.), Ref. I L.R. 1938 Nag. 298, 19 P.L.T. 21.
——520 = 33 P L R. 808 Foll. 40 P.L.R. 188.
——618 Not Foll. I L.R. 1938 Mad. 922, 1938 A.L J. 955; 19 P.L T. 80; Ref. (1938) 1 M.L.J. 316.
——660 Foll. 13 Luck. 35.
——766 Foll I L.R. 1938 Nag. 308.
——775 Rel. I.L R. 1938 Lah. 417.
14 Lah. 6 Ref. 42 C.W.N. 523
——106 Ref. 1938 O.W.N. 257.
——206 Dist. I.L.R. 1938 Lah 379.
——231 = 33 P L.R. 919 Ref. 40 P.L.R. 273
——255 Ref. I.L R 1938 Lah. 47.
——315 Reversed. I L R. 1938 Lah 1 (P.C.).
——409 = 34 P.L R. 528 Ref. 40 P.L.R. 38
——421 = 34 P L.R. 101 Ref. 40 P.L R. 97.
14 Lah 580 Ref. 40 P.L.R. 124, Rel. I.L.R. (1938) 2 Cal. 320
——646 Rel. I L.R. 1938 Nag 45.
——656 Foll I.L R. 1938 Nag. 409
——696 Foll 40 P.L R. 25
——703 = 34 P L R. 717 Ref. 40 P.L R 422.
——715 Ref I L R. 1938 All. 865 = 1938 A.L.J 813
——744 Ref 40 Bom L.R 411.
15 Lah. 9 Foll. I.L.R 1938 Nag. 289.
——78 Not Foll I.L R 1938 Mad. 460 = (1938) 1 M.L J. 159.
——125 Ref. 40 P.L R 588
——132 Foll. 1938 Rang L.R. 651.
——242 Ref. 1938 Rang L R 468
——294 Rel. I.L R. 1938 Lah. 439.
——389 = 36 P L R. 337 (F B.) Dist. 40 P.L.R. 245.
——531 (F.B) Dist. I.L.R. 1938 Lah 240; Foll 40 P. L.R. 2, Ref. 40 P.L R. 27; Rel. I.L R. 1938 Lah. 450
——591 Ref. I L R. 1938 Bom. 1.
——667 Ref 40 P.L.R. 6
——698 Foll (1938) 1 M L.J. 824
——746 Rel upon. I.L.R. 1938 Lah. 103 = 40 P L.R. 546
——869 Ref. 40 P.L.R. 38; 40 P.L R. 289.
——907 Dist. I.L.R. 1938 Lah 367, Ref. 40 P.L.R. 427
16 Lah 173 Ref. 40 P.L R. 206.
——204 Reversed 1998 O.W.N. 715.
——237 Ref. 40 P.L R 126; Rel. I L.R. 1938 Lah. 332.
——313 Ref. 40 P.L.R 298.
——442 (F B) Expl (1938) 1 M.L.J. 113.
——485 Ref. 40 P.L R. 833.
——517 Disc 19 P.L T. 511.
——594 Diss 40 P.L R 758 (2)
——680 Ref. 40 P.L R 613.
——747 = 37 P.L.R 850 Ref. 40 P.L.R. 850
——782 Affirm. I.L.R. 1938 Lah. 383.
——921 Foll I L R. 1938 Lah. 93; Ref 40 P.L.R 97.
——1086 Rel. I L.R. 1938 Lah. 509
——1090 Foll 40 P.L.R. 461.
17 Lah 53 Ref 40 P.L.R. 123.
——74 (F.B.) Not Foll. I.L.R. 1938 Mad. 460 = (1938) 1 M.L.J. 159.
——275 Dist. 1938 Rang.L R. 371; Ref. (1938) 2 M.L.J. 44.
17 Lah 356 Ref. I.L.R. 1938 All. 563.
——481 Ref. 1938 Rang L.R. 468.
——520 Foll. I.L.R. 1938 Lah. 148.
——610 Rel. I.L.R. 1938 Lah. 417 = 40 P.L R 235.
——629 Dist. I L R. 1938 All 875, 40 P.L.R. 401.
——737 Rel. I L.R. (1938) 2 Cal 320.
18 Lah. 234 Foll 40 Bom L.R. 1010.
——268 Ref. (1938) 1 M.L J. 487.
——484 = 39 P.L R 839 Ref. 40 P.L.R. 303.
——594 Ref. 40 P.L R. 588.
I L R. 1937 Lah. 525 Foll. I.L R. 1938 Nag. 115
I L.R. 1938 Lah. 193 Appr. I L R. 1938 All 861.

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46 P.R. 1868 Foll 40 P.L.R. 746.
20 P.R 1871 Dist. I.L R 1938 Lah 411; Ref. 40 P.L.R. 269
46 P.R 1875 Rel. I.L R. 1938 Lah 367.
20 P R. 1876 Dist I L R. 1938 Lah. 411.
22 P R 1876 Ref. 40 P.L.R. 269.
124 P.R 1876 Ref I.L.R. 1938 Lah. 277.
1 P R. 1877 Ref. 40 P.L.R. 833.
72 P.R. 1879 Ref. I.L.R. 1938 Lah. 193 = 40 P.L.R 193 (F.B), 40 P.L R. 533
114 P.R 1880 Disappr 40 P.L.R. 427.
4 P.R 1881 (Rev) Dist I L.R. 1938 Lah. 411 = 40 P L R. 269.
107 P.R 1881 Ref. I L.R. 1938 Lah. 586 = 40 P L.R. 494.
37 P R 1883 Ref. 40 P.L.R. 240.
64 P.R. 1883 Rel. I.L R. 1938 Lah 173
88 P.R. 1884 Ref. I.L.R. 1938 Lah. 586 = 40 P.L.R. 494
122 P.R 1884 Ref. I L R. 1938 Lah. 485 = 40 P.L.R. 267
132 P.R 1884 Ref. 40 P.L.R. 722; I.L.R. 1938 Lah. 277.
138 P.R. 1884 Ref 40 P L.R. 97.
153 P R. 1884 Ref. 40 P.L.R 193.
11 P.R. 1885 (Rev.) Doubt. I.L.R. 1938 Lah. 589
93 P.R. 1885 Ref I.L.R. 1938 Lah. 485 = 40 P.L.R. 267.
27 P.R. 1888 Ref. I L.R. 1938 Lah. 586.

108 P.R. 1889 Ref. 40 P.L.R. 653.
169 P.R. 1890 Foll. 40 P.L.R. 111
1 P.R. 1891 (Cr.) Ref. I.L.R. 1938 Lah. 251
4 P.R. 1891 Ref. 40 P.L.R. 672
44 P.R. 1891 (F.B.) Foll. 40 P.L.R. 111
106 P.R. 1891 Ref. I.L.R. 1938 Lah. 277 = 40 P.L.R. 722
8 P.R. 1892 Ref. 40 P.L.R. 588
69 P.R. 1892 Ref. 40 P.L.R. 544
9 P.R. 1895 (Rev.) Ref. I.L.R. 1938 Lah. 589
26 P.R. 1895 Dist. I.L.R. 1938 Lah. 44 Ref. 40 P.L.R. 269
96 P.R. 1895 Dist. 40 P.L.R. 33
4 P.R. 1897 Ref. 40 P.L.R. 492
13 P.R. 1897 Ref. 40 P.L.R. 64, Ref. I.L.R. 1938 Lah. 318
47 P.R. 1897 Ref. I.L.R. 1938 Lah. 374
62 P.R. 1898 Ref. 40 P.L.R. 477
69 P.R. 1898 Ref. 40 P.L.R. 97
70 P.R. 1898 Dist. 40 P.L.R. 240
82 P.R. 1898 F.B. Ref. I.L.R. 1938 Lah. 589
61 P.R. 1899 Ref. I.L.R. 1938 Lah. 277 = 40 P.L.R. 722
94 P.R. 1900 Disc. I.L.R. 1938 Lah. 341 = 40 P.L.R. 196
150 P.R. 1900 Ref. 40 P.L.R. 524
6 P.R. 1901 Dist. 40 P.L.R. 240
84 P.R. *1901 = 112 P.L.R. 1901* (F.B.) Ref. 40 P.L.R. 651
25 P.R. 1902 Ref. 40 P.L.R. 64
35 P.R. 1902 Disc. I.L.R. 1938 Lah. 341 = 40 P.L.R. 196.
50 P.R. 1902 Ref. I.L.R. 1938 Lah. 485 = 40 P.L.R. 261.
100 P.R. 1902 Ref. 40 P.L.R. 527.
4 P.R. 1903 (Rev.) Doubt. I.L.R. 1938 Lah. 589.
35 P.R. 1903 (F.B.) Disc. 40 P.L.R. 193, Ref. I.L.R. 1938 Lah. 193 = 47 P.L.R. 533 (F.B.)
56 P.R. 1903 Ref. 40 P.L.R. 728
22 P.R. 1904 Ref. I.L.R. 1938 Lah. 485 = 40 P.L.R. 267.
31 P.R. 1904 Ref. 40 P.L.R. 300.
71 P.R. 1904 Ref. I.L.R. 1938 Lah. 485 = 40 P.L.R. 267.
24 P.R. 1905 Ref. 40 P.L.R. 512, Dist. I.L.R. 1938 Lah. 490
44 P.R. 1905 (Cr.) Ref. I.L.R. 1938 Lah. 229.
67 P.R. 1905 Overr. (1938) 2 *M.L.J. 323; 1938 O.W.N. 715*
12 P.R. 1906 (Cr.) Ref. 40 P.L.R. 806.
85 P.R. 1906 Ref. I.L.R. 1938 Lah. 277 = 40 P.L.R. 722
110 P.R. 1906 Ref. 40 P.L.R. 565
137 R. 1906 Dist. 40 P.L.R. 750.
46 P.R. 1907 = 192 P.L.R. 1908 Foll. 40 P.L.R. 798.

96 P.R. 1907 Ref. I.L.R. 1938 Lah. 485 = 40 P.L.R. 267.
115 P.R. 1907 Ref. 40 P.L.R. 781
127 P.R. 1907 Ref. 40 P.L.R. 512, Ref. I.L.R. 1938 Lah. 490
17 P.R. 1908 (Cr.) = 54 P.L.R. 1908 (Supp.) Ref. 40 P.L.R. 506
33 P.R. 1908 (F.B.) Appr. (1938) 2 M.L.J. 323, 1938 O.W.N. 715.
35 P.R. 1908 Dist. I.L.R. 1938 Lah. 46; Ref. 40 P.L.R. 10
100 P.R. 1908 Ref. I.L.R. 1938 Lah. 411 = 40 P.L.R. 269.
103 P.R. 1908 (F.B.) I.L.R. 1938 Lah. 588 = 40 P.L.R. 494.
108 P.R. 1908 Foll. 40 P.L.R. 801
118 P.R. 1908 Ref. I.L.R. 1938 Lah. 379
121 P.R. 1908 = 3 P.L.R. 190 Ref. 40 P.L.R. 781.
65 P.R. 1909 Ref. I.L.R. 1938 Lab. 411 = 40 P.L.R. 269
78 P.R. 1909 Dist. I.L.R. 1938 Lah. 595
93 P.R. 1909 (P.C.) 467 Ref. I.L.R. 1938 Lah. 173
13 P.R. 1910 = 60 P.L.R. 1910 Ref. 40 P.L.R. 653
20 P.R. 1910 (Cr.) = 140 P.L.R. 1910 Ref. 40 P.L.R. 501
29 P.R. 1910 Ref. I.L.R. 1938 Lah. 367.
37 P.R. 1910 = 60 P.L.R. 1910 Ref. 40 P.L.R. 672
42 P.R. 1910 (P.C.) Foll. 40 P.L.R. 506.
26 P.R. 1911 Ref. 40 P.L.R. 188
45 P.R. 1912 = 71 P.L.R. 1912 Ref. 40 P.L.R. 672.
94 P.R. 1912 Dist. 40 P.L.R. 798.
95 P.R. 1912 Ref. 40 P.L.R. 498.
27 P.R. 1913 Ref. 40 P.L.R. 319
75 P.R. 1913 Dist. I.L.R. 1938 Lah. 598
99 P.R. 1914 Ref. 40 P.L.R. 672.
59 P.R. 1914 Ref. 40 P.L.R. 319
78 P.R. 1914 Foll. 40 P.L.R. 794
8 P.R. 1915 Disc. 40 P.L.R. 153, Foll. I.L.R. 1938 Lah. 271.
19 P.R. 1915 (Cr.) Dist. I.L.R. 1938 All. 681
22 P.R. 1916 Foll. 40 P.L.R. 295, Ref. 40 P.L.R. 20, 40 P.L.R. 573.
53 P.R. 1916 Dist. 40 P.L.R. 784
129 P.R. 1916 Foll. I.L.R. 1938 Lah. *271 = 40 P.L.R. 153.*
45 P.R. 1917 Ref. 40 P.L.R. 781
107 P.R. 1917 Foll. I.L.R. 1938 Bom. 184
1 P.R. 1918 (Cr.) Ref. I.L.R. 1938 Lah. 603 = 40 P.L.R. 850
5 P.R. 1918 Foll. I.L.R. 1938 Lah. 271 = 40 P.L.R. 153
64 P.R. 1918 (P.C.) Dist. I.L.R. 1938 Lah. 367.

67 P.R. 1918 Foll. I.L.R. 1938 Lah. 571 = 40 P.L.R. 692.
87 P.R. 1918 Ref. I.L.R. 1938 Lah. 485 = 40 P.L.R. 267.
82 P.R. 1919 (P.C.) Ref. 40 P.L.R. 10; Ref. I.L.R. 1938 Lah. 246
104 P.R. 1919 Ref. 40 P.L.R. 653.
145 P.R. 1919 Ref. 40 P.L.R. 498.
148 P.R. 1919 Dist. 40 P.L.R. 801

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10 L.L.J. 362 = 109 I.C. 272 Ref. 40 P.L.R. 527.

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53 P.L.R. 1902 Ref. I.L.R. 1938 Lab. 318; 40 P.L.R. 64
29 P.L.R. 1910 (Supp.) Ref. 40 P.L.R. 685.
203 P.L.R. 1913 Foll. 40 P.L.R. 224
292 P.L.R. 1913 Ref. 40 P.L.R. 97
169 P.L.R. 1915 (2) Ref. 40 P.L.R. 20.
11 P.L.R. 1917 Ref. 40 P.L.R. 201
25 P.L.R. 1918 Foll. 40 P.L.R. 798.
27 P.L.R. 18 Ref. 40 P.L.R. 235
——386 Ref. 40 P.L.R. 806
29 P.L.R. 1910 Supp. Ref. 40 P.L.R. 685
30 P.L.R. 131 Foll. 40 P.L.R. 530, Ref. 40 P.L.R. 38.
——433 Ref. 40 P.L.R. 573
31 P.L.R. 281 Ref. 40 P.L.R. 573
——315 Dist. I.L.R. 1938 Lah. 240; Ref. 40 P.L.R. 27.
——736 Ref. 40 P.L.R. 280.
——842 Ref. 40 P.L.R. 243.
——893 Ref. 40 P.L.R. 311.
32 P.L.R. 360 Ref. 40 P.L.R. 682
——365 Dist. 40 P.L.R. 264.
——413 Ref. 40 P.L.R. 188, Ref. 40 P.L.R. 409.
——729 Ref. 40 P.L.R. 204
——945 Ref. 40 P.L.R. 458.
33 P.L.R. 231 Ref. 40 P.L.R. 311.
——416 Diss. 40 P.L.R. 295 Ref. 40 P.L.R. 573.
——479 Diss. 40 P.L.R. 295
——488 Ref. 40 P.L.R. 204
——517 Ref. I.L.R. 1938 Lah. 417, 40 P.L.R. 235
——564 Ref. 40 P.L.R. 573
——667 Ref. 40 P.L.R. 518
——887 Foll. 40 P.L.R. 79.
——940 Ref. 40 P.L.R. 193.
——1090 Ref. 40 P.L.R. 300.
34 P.L.R. 262 Foll. 40 P.L.R. 196
——417 Ref. 40 P.L.R. 193
——489 40 P.L.R. 38
——853 Ref. 40 P.L.R. 573
35 P.L.R. 143 Ref. 40 P.L.R. 269.
——173 Ref. 40 P.L.R. 850.

35 P.L.R. 675 Reviewed 40 P.L.R 153.

37 P.L.R. 441 Ref. 40 P L.R. 672.

(1935) 87 P.L.R. 624 (P.C.) Foll I L R. 1938 Lah. 75, Rel. 42 C.W.N 38.

38 P.L R 74 Ref. 40 P.L R. 640.
———182 (P C) Ref 40 P.L R. 319.
———233 Ref 40 P L.R. 8.
———269 Disc. 40 P.L R. 193
———333 Rel. I L.R. 1938 Lah. 374.
———349 Ref 40 P L R. 204.
———390 Ref 40 P L R. 231.
———623 Ref. 40 P L.R 38.
———723 Ref 40 P.L.R. 38.
———944=A I.R. 1937 Lah 16 Foll 40 P.L.R. 435
———1024 Ref 40 P.L R. 640.
———1107 Rel I L R. 1938 Lah. 359.

39 P.L R 6 Diss 40 P.L.R. 264.
———125 Ref 40 P L.R. 403.
———338 Rel. I.L R 1938 Lah. 336
———349 (F B) Rel. 40 P L.R. 690
———640 Ref. 40 P L R 64.
———649 Ref. 40 P L R 303.
———756 Rel. I L.R. 1938 Lah 336.

40 P.L R. 14 Foll. 40 P L.R 264.
———33 Ref. 40 P.L R. 528.
———138 Foll. 40 P.L R. 664.
———193 Foll. 40 P.L.R. 801.

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1 Mad. 89 Ref. I L R 1938 Mad. 1040.

2 Mad. 58 Foll. I L R 1938 Bom. 362=40 Bom.L.R 365.
———140 Ref. (1938) 2 M.L.J. 165, 40 Bom L R. 59
———174 Appr. I.L R. 1938 All. 342.
———175 Ref. (1938) 2 M.L.J. 85.
———223 Rel. upon I.L R. 1938 Lah 103; Ref. 40 P.L.R. 546

3 Mad 66 Ref. (1938) 1 M L.J. 235.
———98 Ref. 1938 Rang.L.R. 176
———236 Ref. 40 P.L.R. 767

4 Mad. 179 Ref. I.L.R 1938 Nag 91.
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———317 Ref. 1938 A L.J. 500.
———330 Cons (1938) 2 M.L J 923.
———344 Ref I L.R. 1938 All 114, I.L.R. 1938 Mad 1040

5 Mad. 29 Disc. I L.R. 1938 Nag 115.
———108 Dist. (1938) 1 M L.J. 757.
———173 Expl. 17 Pat. 206

5 Mad. 273 Ref. I.L R. 1938 All. 114.
———391 Ref. 40 P.L.R. 243.

6 Mad. 27 Dist. (1938) 1 M.L.J. 526.
———344 Ref. I.L.R. 1938 All. 513=1938 A.L.J. 313, 1938 O.W.N. 433.

7 Mad. 89 Not Foll. 40 P.L.R. 469.
———112 Ref. I.L.R. 1938 Mad. 933.
———255 40 P.L.R 243
———434 Ref. (1938) 1 M.L.J. 351.
———936 Foll. 1938 O.W.N. 7

8 Mad. 175 Ref. (1938) 2 M L.J. 340, Rel I L R. 1938 Nag 54
———557 Ref. 40 Bom L.R. 937

9 Mad. 256 Dist. (1938) 1 M.L J. 769
———271 Diss. I.L.R. (1938) 2 Cal. 320
———463 Rel. 13 Luck. 444.

10 Mad. 9 Ref I.L.R. 1938 Mad 897=(1938) 1 M L.J. 467.
———94 Ref. I L.R 1938 Mad 933
———160 Ref 1938 Rang.L.R 270.
———205 Ref. 40 P.L.R 824.
———282 Ref. I L R 1938 Mad. 381=(1938) 1 M L J 257.
———334 Ref. 40 Bom.L R 937.
———375 Ref. (1938) 2 M L J 85.

11 Mad. 204 Ref I L.R 1938 Lah. 75.
———323 Ref. (1938) 1 M.L.J. 817
———330 Dist (1938) 2 M L.J 337
———345 Ref. 40 P L R 685.
———659 Ref 40 P L.R. 591.

12 Mad 9 Ref. I L R. 1938 Lah 494
———260 (F.B.) Ref. (1938) 2 M L J 511

13 Mad. 10 Ref I L R. 1938 Nag. 115.
———269 Ref. 19 P.L T. 309.
———445 Ref. 40 P.L R 319.

14 Mad. 1 Ref 42 C W.N 345.
———149 Ref. I.L.R 1938 Nag 115.
———150 Rel 13 Luck. 101, (1938) 1 M.L.J. 796
———232 Diss I.L R. 1938 All 714, 1938 O.W.N 642
———269 Ref. I L.R. 1938 All. 664; 1938 A.L J. 561.
———408 (F. B) Mentioned (1938) 1 M.L J 715.

15 Mad 12 Ref. I L.R. 1938 Lah 494
———79 Ref. 13 Luck 405.
———94 Foll I.L.R. 1938 Nag 308.
———95 Ref. I.L.R. 1938 Mad. 888.

15 Mad. 181 Foll. I.L.R. 1938 Mad. 309=(1938) 1 M L J. 29.
———333 Ref. I.L R. 1938 Mad. 897=(1938) 1 M.L.J 467.
———421 Ref. I.L.R. 1938 Nag. 115.

16 Mad. 23 Appl. (1938) 1 M.L J. 232; Ref. 40 Bom L R. 704; 19 P.L T. 169, I.L.R. 1938 Mad 551; 42 C.W.N. 449.
———144 Dist. (1938) 2 M.L J. 337.
———194 Ref. I.L.R. 1938 Lah. 494.
———220 Dist. (1938) 1 M.L.J. 450.
———285 Ref. 17 Pat 245.
———341 Rel. (1938) 2 M.L J 362.
———361 Ref. 13 Luck 138.
———452 Foll I L.R. 1938 All. 342, Ref. 1938 A.L J. 117

17 Mad. 131 Diss I.L.R. 1938 All. 714, 1938 O.W.N. 642.
———160 Foll & Disc. 40 Bom L. R. 937.
———165 Appr. I.L.R 1938 All 342.
———182 Ref. I.L R 1938 Nag. 115.
———379 Ref. I.L.R. (1938) 1 Cal. 75

18 Mad 158 Ref (1938) 1 M L.J. 17.
———201 Ref. I L.R 1938 Bom. 184.
———255 Ref (1938) Rang L.R. 102
———306 (F.B) Foll I.L.R 1938 Nag. 308.

19 Mad. 211 Rel. (1938) 2 M.L.J. 663.
———240 Ref. 40 P L R. 806

20 Mad. 3 Rel. I.L.R 1938 All. 750=1938 A.L J. 565, 1938 O.W.N. 591.
———35 Ref (1938) 1 M.L J 171.
———79 Diss. 1938 Rang L R. 236.
——— 84 Dist. 1938 Rang L.R. 19.
———299 Ref. I.L.R 1938 Mad. 888=(1938) 1 M L J. 634.
———398 Appr. (1938) 1 M.L J. 334 (F.B).

21 Mad 8 Ref. 40 P.L.R. 591.
———40 Rel. I.L.R. 1938 Nag. 255.
———141 Not Foll I.L R. 1938 Nag. 45.
———263 Ref. I L R. 1938 Nag. 115.
———293 Ref. (1938) 1 M.L.J. 485.
———371 Ref (1938) 1 M.L.J. 750.
———388 Ref. 17 Pat. 223.

22 Mad. 49 (F.B) Expl. (1938) 1 M.L.J. 378=I.L.R. 1938 Mad. 568.
———58 Foll. 40 Bom.L.R. 365.

22 Mad. 132 Ref. 1938 A L J. 551.
——155 Ref 17 Pat. 245.
——166 Fol. (1938) 2 M L.J. 948, Ref (1938) 2 M.L.J. 179.
——179 Disc. 17 Pat. 191
——209 Ref. I.L.R. 1938 Nag. 370
——223 Ref I.L.R 1938 Bom 3[illegible]2
——234 Ref. (1938) 1 M L.J 368.
——248 Ref (1938) 2 M L.J 44
——259 Ref I L.R 1938 All. 614=1938 A L.J 521.
——455 Ref (1938) 1 M.L.J 455
——519 Ref I L.R 1938 Nag 10
23 Mad 24 Overr I L R 1938 Mad. 675=(1938) 1 M L J 314, Ref I L R 1938 All 89
——28 Ref 1938 A L J 680
——84 Cons & Dist (1938) 2 M L J 840
——121 Foll (1938) 1 M.L.J. 417
——155 Ref. I L.R 1938 Bom 114.
——271 (P.C.) Ref. 40 P L R 319.
——371 (F.B.) Disc & Appr I L.R. 1938 Mad. 609
——439 Foll (1938) 1 M L.J 113.
——490 Appr (1938) 1 M.L.J 628 (F B)
——510 Ref I L.R. 1938 All 767=1938 A.L.J. 617.
——597 (F B) Expl I.L R. 1938 Mad. 565=(1938) 1 M.L.J. 378
24 Mad 163 Foll I.L.R 1938 Mad 466=(1938) 2 M.L J. 651.
——205 Expl I L.R. (1938) 1 Cal 35.
——233 Not Foll I L R 1938 Nag 45
——555 Ref I L R 1938 Nag 10.
——654 Dist (1938) 1 M.L J 378.
25 Mad. 7 Ref. 1938 O W N. 779
——61 Ref 42 C.W N 729.
——103 (F B) Disc I L R 1938 Lah. 341, Foll 40 P L R 196.
——166 Ref. 19 P L.T 309
——183 Ref. I L R. 1938 Mad 335.
——351 Ref I L R 1938 Mad 696=(1938) 1 M L J 216
——389 Ref I L R 1938 Nag 160
——519 Ref I L R 1938 Nag. 255
——543 Ref I L R. 1938 Mad. 1031.
25 Mad. 600 Mentioned (1938) 1 M.L.J 715
26 Mad. 66 Ref. (1938) 1 M.L.J. 519
——157 Ref 42 C.W N 832.
——179 Ref. (1938) 1 M L.J. 325.
——243 Ref. I.L.R. (1938) 1 Cal 200=42 C.W.N. 129
——287 Foll. 40 Bom L.R. 432.
——410 Ref (1938) 2 M.L.J. 434.
——419 Appr. 19 P.L.T. 461.
——450 Ref. 1938 Rang L.R. 276.
——544 Ref 42 C.W.N 1157.
——596 Ref I L.R 1938 Mad. 683
——656 Foll I L.R. 1938 Lah 188
——673 (F B) Foll (1938) 1 M L J 351
——686 (F B) Ref (1938) 2 M L.J 1039
27 Mad. 21 Ref. I.L.R. 1938 All. 209
——28 Not Foll. I.L.R. 1938 Nag. 45.
——37 Ref. 13 Luck. 560.
——45 Dist. I.L.R. (1938) 2 Cal 243; Ref. I.L.R. 1938 Bom. 454; Foll. 40 Bom.L.R 422.
——192 Ref (1938) 2 M L.J. 623
——243 Ref. 40 Bom L.R. 381.
——271 Not Foll I L.R 13 Luck. 115.
——315 Ref (1938) 1 M.L J. 63.
——435 Ref. 40 P.L.R. 319.
——538 Ref. 1938 Rang L R. 176.
——588 Foll I.L.R. 1938 Nag 280.
28 Mad. 1 Ref I.L.R 1938 All. 761=1938 A L J. 715.
——90 Disc. 19 P.L.T. 297.
——161 *Ref 42 C W.N 1058.*
——344 Ref I L R 1938 Mad 1019—(1938) 2 M L J. 756
——394 Ref (1938) 2 M L J 76, 112.
——396 Dist. (1938) 1 M L J 135.
——539 Ref (1938) 2 M L J 434
29 Mad 111 Ref. I L.R. 1938 Mad 933
——126 (F.B) Ref. I.L R 1938 Mad. 343
——151 (F B) Foll (1938) 1 M L J 803
——232 Ref 42 C W.N 1177.
——237 Ref. (1938) 1 M L.J. 817.
——239 Ref I L R. (1938) 1 Cal 531—42 C.W.N 422, Rel. 42 C.W.N 239
29 Mad. 305 Ref I L R. 1938 Nag. 45.
——336 Ref. 42 C.W.N. 1028.
——372 Ref. 42 C.W.N. 222.
——375 Dist. 1938 Rang L.R. 143
——539 Diss 1938 A L.J. 486.
30 Mad. 62 Dist. 40 P.L R. 33.
——75 Ref. (1938) 1 M.L.J. 56.
——126 (F.B) Ref. (1938) 1 M.L.J. 406
——255 Ref. I.L.R. 1938 Lah. 582.
——464 Disc. I.L.R. 1938 Lah. 148—40 P.L.R. 610.
31 Mad. 43 Ref. 19 P.L.T. 665.
——47 Ref 1938 O W.N. 711.
——71 Ref. 42 C.W N. 286.
——223 Dist. I L R. 1938 Nag. 301.
——234 Ref 40 Bom.L.R. 411.
——321 Ref. I L.R. 1938 Nag 115.
——338 Ref. I.L.R. 1938 Bom. 1.
——366 (F.B.) Expl. I.L.R. 1938 Mad. 688=(1938) 1 M.L J 298.
——431 Ref 40 P L.R. 685.
——442 Foll. I.L.R. 1938 Mad. 52.
32 Mad. 62 Ref. 1938 Rang.L.R. 243.
——141 Foll. (1938) 2 M L J. 355
——167 Ref (1938) 2 M.L.J. 623
——258 Ref 19 P.L.T. 51.
——284 Disappr (1938) 1 M L J 526.
——291 Ref. (1938) 1 M L.J. 174
——330 Ref. 13 Luck. 199
——334 Ref. (1938) 2 M L.J. 1001
33 Mad 46 Ref. I L.R. 1938 Mad 348.
——82 Ref I L R (1938) 1 Cal. 35, *(1938) 2 M L J.* 1035
——208 Ref (1938) 1 M L J. 406
——265 Ref (1938) 2 M L.J. 85.
——308=20 M L.J 633 over. (1938) 1 M L J 334 (F.B.)
——402 Ref. (1938) 2 M.L J. 651.
——452 Ref 40 P L R. 319
——459 Ref 13 Luck 554.
34 Mad 1 Ref. (1938) 1 M.L.J. 386.
——12 Foll. I L.R 1938 Bom. 184.
——25 Ref. 1938 Rang L.R. 565.
——51 Ref (1938) 1 M L.J. 806
——68 Ref 40 Bom L.R. 937.
——76 Ref I L.R. 1938 Nag. 280.

50 Mad. 639 Not Appr. (1938) 1 M L.J. 316; Ref. I L.R. 1938 All. 922.
——867 Expl. I.L R (1938) 1 Cal 369
——882 Ref (1938) 1 M L.J 193
——897 Ref. I.L.R 1938 Lah. 470.
——916 Foll. (1938) 1 M.L.J. 767.
——977 Rel I L.R. 1938 Mad. 897=(1938) 1 M L.J. 467.
——981 Foll I L.R 1938 All. 84; Ref I L.R. (1938) 1 Cal 132; (1938) 1 M.L. J. 179
51 Mad 96 (P.C) Foll I.L.R. 1938 Nag 308
——180 Ref (1938) 1 M.L J. 344.
——257 Dist I.L R. 1938 All. 157
——266 (F B) Ref I L R. 1938 Mad. 381=(1938) 1 M.L J 257.
——347 Dist I L R (1938) Bom 64, Not Foll I.L.R. 1938 Nag 370
——361 Rel I L.R 1938 Nag. 10
——603 Ref I L.R. (1938) Nag 298, 19 P.L T. 21.
——610 Ref I L R 1938 All. 738=1938 A L.J. 703
——648 Ref (1938) 1 M.L J. 310
——664 Rel I L.R. 1938 Nag 106
——701 Dist I L.R. 1938 Nag. 280
——711 Rel. I.L.R. 1938 Nag. 221.
——777 Foll. 17 Pat. 9.
——778 (P C) Rel. 40 P.L.R. 29
——815 Ref 40 P.L.R. 616.
——849 Ref. (1938) 2 M L.J. 613.
——862 Dist. I.L.R. 1938 Mad 439
52 Mad 105 Foll. 1938 Rang L. R. 35.
——123 Ref (1938) 2 M L.J. 775
——160 Ref. (1938) 1 M L.J. 33
——175 Rel. I L.R. 1938 Nag. 364.
——194 (F.B.) Ref I L R. 1938 Mad. 981.
——207 Rel. (1938) 1 M L.J. 682.
——336 Rel. 40 P.L.R. 33
——361 Ref (1938) 2 M L.J. 44.
——398 Ref 40 Bom L.R 428
——529 Ref. I L.R. 1938 All. 875=1938 A.L.J 943
——538=A I R. 1929 P.C. 152 Ref. 40 P.L.R. 573.
52 Mad. 563 (F.B.) Ref (1938) 1 M.L.J. 495.
——696 Ref. (1938) 1 M.L.J 519
——717 Expl. (1938) 2 M.L.J. 377, Ref. I.L.R. 1938 Mad 72.
——809 Ref. I L R. (1938) 1 Cal 531=42 C W.N. 422; Rel I L R. (1938) 1 Cal. 354=42 C W.N. 371.
——827 Ref. I L.R. 1938 Lah. 47
——866 Foll. (1938) 2 M.L J. 589
——899 Dist 19 P.L.T. 119
53 Mad. 84 (F.B) Rel. (1938) 1 M.L J. 437
——137 Dist. (1938) 2 M L.J 478.
——367 Ref. (1938) 2 M L J. 829.
——378 Ref. 13 Luck. 135; Rel. 1938 Bom. 273; Dist. 40 Bom L.R. 507.
——581 Ref. 42 C.W.N. 523
——688 Ref. I.L.R. 1938 Nag. 298.
——838 Disappr. I.L.R. 1938 All 658; Foll. 42 C.W.N. 748.
——881 (F.B.) Rel. (1938) 1 M L.J. 154.
——904 Dist. and Doubt. 17 Pat. 102=19 P.L.T. 176.
——943 Dist. (1938) 1 M L J. 829.
54 Mad 1 Foll. (1938) 1 M.L.J. 139; Ref. I.L.R. 1938 Mad. 1050=(1938) 1 M. L.J. 750.
——27 Ref. (1938) 1 M.L.J. 582.
——75 Ref. I.L R. 1938 Mad. 348.
——132 Rel (1938) 1 M.L.J. 325.
——269 Ref. (1938) 2 M L.J. 704.
——315 Rel. 13 Luck. 81.
——469 Ref. 1938 A.L J. 544.
——532 Ref. (1938) 2 M.L.J. 987.
——691 (P.C.) Ref. I.L.R. 1938 Mad. 25.
——793 Foll. (1938) 2 M L.J. 340.
——900 Ref. (1938) 2 M.L.J. 829.
——931 Expl 19 P.L.T. 86; Ref. (1938) 2 M.L J 618
55 Mad. 171 Cons. I.L.R. 1938 Mad. 335=(1938) 2 M.L. J. 22; Rel. 32 S.L.R. 138; I.L.R. 1938 Mad. 867=(1938) 1 M.L.J. 281; Appr. I I.R. 1938 Mad. 909.
——251 Diss. 40 P.L.R. 522; Ref. I.L.R. 1938 Lah. 593.
55 Mad. 262 Rel. I.L.R. (1938) 2 Cal. 447=42 C.W.N. 952; I.L.R. 1938 Mad 545=(1938) 2 M L.J. 81.
——316 Ref. I L R. 1938 Mad. 1063=(1938) 1 M.L.J. 471
——332 Disc. I L.R. 1938 Lah. 148=40 P.L.R. 640.
——343 Disc. 19 P.L.T. 665.
——385 Ref. I.L.R. 1938 Mad. 72=(1938) 2 M.L.J. 377.
——483 Rel. 40 Bom.L R. 202; 40 P L R. 662.
——622 (F.B) Ref. I.L.R. 1938 Mad. 343.
——657 Ref. I.L.R. 1938 Mad. 87.
——715 Rel. (1938) 1 M.L.J. 871.
——727 Rel I L.R 1938 Nag. 54
——835 Overr. I.L.R. 1938 Mad. 1007=(1938) 2 M.L. J. 128; Ref. 40 P.L R. 712
——848 Foll. (1938) 2 M.L J. 589.
——883 (F.B) Ref (1938) 1 M.L.J. 68
——903 Diss. 17 Pat 15=19 P.L T. 432
——942 Foll. (1938) 1 M.L.J. 539
——982 Diss. 1938 Rang L.R. 651; Ref. I.L R. 1938 Nag. 245.
56 Mad 134 Foll. I.L.R. 1938 Mad. 841=(1938) 1 M.L. J. 552 (F B.).
——169 Diss 1938 Rang L.R. 216; 40 Bom L.R. 1001; Ref I.L.R. (1938) 1 Cal. 607=42 C.W.N. 38; 1938 Rang L R. 430
——177 Ref. 42 C.W.N. 321.
——198 Dist. I L.R 1938 Lah. 470; Foll. 1938 Rang L.R. 385.
——323 Ref. (1938) 1 M.L J. 235.
——339 Mentioned (1938) 1 M.L.J. 417.
——366 Ref. (1938) 1 M.L.J. 406; (1938) 2 M L.J. 894.
——534 Diss. 40 Bom L.R. 1029; Ref. (1938) 1 M.L. J. 715.
——657 Ref. 40 P.L.R. 319.
——692 Rel. (1938) 2 M L.J. 394; Ref. I.L.R. 1938 Mad. 1003
——705 Overr. I.L.R 1938 Mad. 508=(1938) 1 M.L. J. 628 (F.B); Ref. I L.R. 1938 Mad. 1031.
——744 Rel. I L R. 1938 Nag. 106.
——833 Expl. I.L.R. 1938 Mad 968.
——915 (F.B.) Foll. (1938) 1 M.L.J. 249

57 Mad. 177 (F.B) Disappr. I.L.R. 1938 Bom. 331= 40 Bom.L.R. 297 (F.B); Ref. 19 P.L.T. 21.
——308=65 M L.J. 844 Cons. (1938) 2 M L.J. 1053.
——347 Ref. 40 P.L.R. 300
——652 (P C.) Ref. 40 P.L.R. 655; Reviewed 17 Pat. 507.
——931 Ref. I L.R. 1938 Mad. 1019
——951 Dist. I.L.R 1938 Nag 280.
——1023 Not Foll. I.L.R 1938 Lah 47
58 Mad. 116 Dist. I.L.R 1938 Lah 289; Expl (1938) 2 M L.J. 568.
——118 Ref 40 P L R 69.
——181 Ref I.L.R. 1938 Mad. 360=(1938) 1 M.L.J 268 (P.C.), 1938 Rang L.R 480
——261 Ref I L R 1938 Mad 933
——270 Dist I L R 1938 All 861
——285 Ref. (1938) 1 M L.J. 495.
——367 Ref. I.L.R. 1938 Nag. 133.
——418 Comm. 40 Bom L.R. 968; Ref. I.L.R. 1938 Lah. 148=40 P.L.R. 640; 40 P.L.R. 124.
——513 Disappr I.L.R. 1938 Mad 902=(1938) 2 M L. J 456.
——781 Foll I L R. 1938 Bom 738=40 Bom.L R. 929
——787 Disc. 1938 Rang L.R. 104.
——794 (F.B.) Foll (1938) 2 M L.J. 385.
——802 Ref. (1938) 2 M.L.J. 987.
——804 Ref 42 C W N 516
——972 (F B) Dist. (1938) 1 M L J 829
——988 (F B) Cons I L R 1938 Mad 39
——994 (F B) Foll. I L R. 1938 Mad. 451=(1938) 2 M.L.J 404.
——1038 Diss I L R. 1938 Mad 439
59 Mad 5 Ref. I L R. 1938 Mad. 381=(1938) 1 M L.J. 257.
——93 (F B.) Dist. 40 P L R. 419
——175 Dist and Appl 40 Bom.L R 343
——202 (F.B) Foll. (1938) 1 M.L.J. 316, Disappr. I L R. 1938 All 922=1938 A. L.J. 955; 19 P L.T 80
——268 Ref. I L R. 1938 Mad 933; 17 Pat. 268=19 P. L.T 579
——349 Foll (1938) 2 M L J 397.

59 Mad 359 Diss. 40 Bom.L.R. 1001; Dist. 17 Pat. 154= 19 P.L.T. 500; Foll I L. R. 1938 Nag 206; Ref. 1938 Rang L R. 430.
——428=69 M L.J. 832 Ref. (1938) 1 M L.J. 351.
——412 Expl. and Dist. I L R. 1938 Mad 343=(1938) 2 M.L.J. 360
——562 Ref. (1938) 2 M.L J. 399
——660 Ref I.L.R. 1938 Nag 370
——693 Ref. (1938) 1 M L.J. 715.
——744 Not Foll. 19 P L.T. 256
——872 Ref. (1938) 1 M L J. 351.
——887 Appr I L.R. (1938) 1 Cal 887
——895 Ref. (1938) 2 M L.J. 980
——928 Dist. (1938) 1 M L.J. 781; Ref. I.L.R. 1938 Mad 1063; (1938) 1 M. L.J. 471.
——1020 (F.B) Dist. I.L.R. 1938 Bom 107=40 Bom. L.R 100
I.L.R. 1937 Mad. 121 Foll (1938) 1 M L.J. 487; 492.
——263 Ref 40 P.L.R. 867.
——517 Ref. I L R 1938 All. 252
——532 Ref. I L R 1938 All 252
——616 (F.B) Foll I L R. 1938 Mad 326
——841 Ref. (1938) 2 M L J. 44.
——990 Ref and Appr I.L R. 1938 Mad. 909=(1938) 2 M L J. 22
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——545 Ref. (1938) 2 M L J 520

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8 M L J. 148 Foll. (1938) 2 M L. J. 283.
9 M L J. 105 Ref 40 Bom L R 365.
——312 Foll. (1938) 2 M L.J. 663
11 M L J 344 Ref (1938) 2 M L J. 430
12 M.L J. 22 Ref I L R 1938 Mad. 381.
——348 Mentioned 40 Bom L R 411
——351 Ref. 13 Luck. 334
14 M L.J 448 Ref 40 P L R 143
17 M.L.J 184 (P C) Disc. I L R. 1938 Mad. 696.

18 M.L.J. 155 Ref. (1938) 1 M. L.J. 235
——456 Ref. (1938) 2 M L.J. 523
19 M.L.J. 62 Foll I.L R. 1938 Mad. 410.
21 M L.J. 481 Diss 1938 Rang. L.R. 72.
23 M.L.J. 493 Cons. (1938) 2 M L J. 923.
——595 Ref (1938) 2 M.L.J. 688.
——638 Ref (1938) 1 M.L J. 154
24 M L.J. 8 Disc 19 P L.T. 186.
——36 Ref. (1938) 2 M.L.J. 434
——66 Ref (1938) 2 M.L.J. 33.
——70 Ref. I.L R. 1938 Lah. 582.
——75 Ref (1938) 2 M.L.J. 663.
——233 Ref. I.L R 1938 Mad. 1031.
——405 Ref (1938) 2 M.L.J. 1039.
——428 Diss (1938) 2 M.L.J. 501.
——472 Foll. (1938) 1 M.L.J. 313.
——693 Ref (1938) 2 M.L.J. 76
25 M.L.J. 27 Foll (1938) 1 M L. J 33, Ref (1938) 2 M L. J. 256.
——50 Ref. (1938) 2 M.L.J. 829.
——95 Ref (1938) 1 M.L.J. 113
——205 Ref (1938) 2 M.L.J. 44
——308 Ref I.L R 1938 Mad. 72
——354 Foll (1938) 2 M L.J. 283
——552 Not Foll I.L R. 1938 Lah 403
27 M.L J 239 Disappr I.L.R. 1938 All 904.
——291 Ref. (1938) 2 M.L.J. 822.
——482 Cons. 42 C.W N. 1023.
——587 Ref. (1938) 1 M.L.J. 817
——677 Ref 13 Luck. 397; (1938) 1 M L.J 514; Ref. (1938) 1 M L.J 216=I.L. R 1938 Mad 696.
28 M L.J. 199 Dist. (1938) 2 M L J 79.
30 M L.J. 241 Ref. I L.R. 1938 Mad. 1019.
——391 Ref 13 Luck. 689.
——611 Ref I L.R. 1938 1063; Foll. (1938) 1 L J. 471.

31 M.L.J. 207 Ref. I.L.R. 1938 Mad. 819
——280 Foll. (1938) 2 M.L.J. 1013
——362 (P.C.) Ref. 42 C.W.N. 630.
——688 Ref (1938) 2 M.L.J. 846
——758 Diss. (1938) 1 M.L.J 174
32 M.L.J 354 Overr I.L.R 1938 Mad 568 (F.B.).
——392 Rel I.L.R 1938 Nag. 54.
33 M.L.J 316 Rel (1938) 2 M.L.J. 430.
——355 Comm I.L.R. 1938 Mad 381=(1938) 1 M.L.J. 257.
——415 Rel (1938) 2 M.L.J. 244; 270
——481 Foll I.L.R. 1938 Mad. 923.
35 M.L.J. 253 Foll. (1938) 2 M.L.J 936
36 M.L.J. 27 Ref. (1938) 1 M.L.J 485.
37 M.L.J 369 Cons. and Diss. (1938) 1 M.L.J 378
39 M.L.J. 629 Foll. I.L.R. 1938 Mad 888
40 M.L.J 124 Appr I.L.R 1938 Mad. 819=(1938) 1 M.L.J 775
——289 Ref 40 Bom L.R. 1041
41 M.L.J 75 Overr. I.L.R 1938 Mad. 819=(1938) 1 M.L.J. 775
42 M.L.J 133 Foll (1938) 2 M.L.J 663
——352 Foll (1938) 2 M.L.J 509
43 M.L.J 728 Ref I.L.R. 1938 Mad 1031, Rel 42 C.W.N 298.
44 M.L.J. 202 Ref (1938) 1 M.L.J 769
——367 Ref and Appr. (1938) 1 M.L.J 763.
——437 Ref. I.L.R. 1938 Mad 988.
45 M.L.J. 389 Ref. 42 C.W.N 1028.
——651 Concurr. 40 Bom L.R. 676.
46 M.L.J. 74 Rel. I.L.R. 1938 Nag 206.
——145 Ref. (1938) 2 M.L.J. 511.
47 M.L.J. 448 Rel. (1938) 1 M.L.J. 193.
——554 Appl. (1938) 1 M.L.J. 106.
——558 Foll. I.L.R. 1938 Mad. 888=(1938) 1 M.L.J. 634.
48 M.L.J. 224 Expl (1938) 1 M.L.J 113
——514 Ref 42 C.W.N. 667; Rel. I.L.R. 1938 Nag. 106.
——528 Ref. (1938) 1 M.L.J. 817.
48 M.L.J. 598 Ref. (1938) Rang. L.R. 542.
49 M.L.J. 311 Ref. 42 C.W.N. 422; Rel. 42 C.W.N. 371.
——379 Not Appr. (1938) 1 M.L.J 368.
——554 Diss. (1938) 2 M.L.J. 402
——602 Ref. I.L.R 1938 Mad. 888
——616 Ref. (1938) 1 M.L.J 715; Ref. and Dist (1938) 1 M.L.J. 471.
——656 Ref. (1938) 2 M.L.J. 430
——699 Diss. 40 Bom.L.R. 676
——753 Ref. (1938) 2 M.L.J. 1001.
——788 Ref (1938) 1 M.L.J. 113.
50 M.L.J. 42 Foll. (1938) 2 M.L.J. 1013; Rel. (1938) 2 M.L.J. 982
——665 Ref. (1938) 1 M.L.J. 471.
51 M.L.J. 90 Ref. (1938) 1 M.L.J. 610.
——443 Overr. (1938) 2 M.L.J. 156; Dist. 1938 Rang. L.R. 699.
——510 Foll (1938) 1 M.L.J. 634; Ref. I.L.R. 1938 Mad. 888.
——598 Diss. (1938) 2 M.L.J 663.
53 M.L.J 142 Foll I.L.R. 1938 Mad. 439
——176 Foll. I.L.R. 1938 Nag 289
——179 Ref. (1938) 1 M.L.J. 582
——245 (P.C.) Rel (1938) 1 M.L.J. 574
——769 Ref. (1938) 1 M.L.J. 519.
——810 Mentioned (1938) 1 M.L.J. 391.
——881 Ref. (1938) 1 M.L.J. 130.
54 M.L.J. 109 Ref. (1938) 1 M.L.J. 582
——357 Ref. (1938) 1 M.L.J. 552
55 M.L.J. 132 Rel. (1938) 2 M.L.J 756.
——231 Ref. (1938) 2 M.L.J. 750.
——861 Ref. (1938) 2 M.L.J. 632
56 M.L.J 141 Ref. (1938) 1 M.L.J. 662.
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57 M.L.J 588 Diss I.L.R. 1938 Mad 523
58 M.L.J. 137 Rel. (1938) 2 M.L.J. 835.
59 M.L.J. 30 Disc. I.L.R. 1938 Mad. 479.
——321 Ref. (1938) 2 M.L.J. 585.
——596 Ref. (1938) 2 M.L.J. 95.
60 M.L.J. 302 Foll. (1938) 2 M.L.J. 775.
61 M.L.J. 294 (P.C.) Expl. and Dist. (1938) 1 M.L.J. 320.
——330 (P.C.) Expl (1938) 1 M.L.J. 73; Ref. 40 P.L.R. 685.
——518 Ref (1938) 2 M.L.J. 179
——544 Diss (1938) 2 M.L.J. 390.
62 M.L.J. 399 Ref. (1938) 2 M.L.J. 894.
63 M.L.J. 303 Ref I.L.R. 1938 Mad 933.
——788 Ref. I.L.R. 1938 Mad. 326.
64 M.L.J. 148 (P.C.) Foll. (1938) 1 M.L.J. 33.
——382 Foll. (1938) 2 M.L.J. 362; Ref. 42 C.W.N. 554.
——715 (P.C) Ref. (1938) 2 M.L.J 244.
65 M.L.J. 173 (F.B) Rel. I.L.R. 1938 Nag. 151.
——282 Ref I.L.R. 1938 Mad. 688=(1938) 1 M.L.J. 298.
——334 Ref. (1938) 1 M.L.J. 769.
66 M.L.J. 412 Dist. (1938) 1 M.L.J. 824.
67 M.L.J 30 Ref I.L.R. 1938 Mad. 933.
——380 Foll. (1938) 2 M.L.J. 362.
——912 Ref. and Not Appr. I.L.R. 1938 Mad 933=(1938) 2 M.L.J. 189.
——921 Ref (1938) 2 M.L.J. 846.
68 M.L.J. 251 Ref (1938) 2 M.L.J 756.
——392 Foll. (1938) 2 M.L.J. 1001.
——630 Rel. (1938) 1 M.L.J. 682.
69 M.L.J. 77 Ref 1938 Rang L.R. 385.
——221 Ref (1938) 1 M.L.J. 325
——269 Ref (1938) 1 M.L.J. 391.
——447 Rel (1938) 1 M.L.J. 325
——479 Foll. (1938) 2 M.L.J.
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——611 (F.B) Affirm (1938) 1 M.L.J. 502 (P.C.).
——632 Affirm. (1938) 1 M.L.J. 426

69 M.L.J. 673 Disappr. (1938) 2 M.L.J. 835.
———695 Ref (1938) 2 M.L.J. 516
70 M.L.J. 162 Ref (1938) 1 M.L.J. 834
———225 (P.C.) Expl (1938) 1 M.L.J 113
———424 Ref. (1938) 2 M.L.J. 623
———404 Ref I.L.R. 1938 Mad. 381=(1938) 1 M L.J. 257.
71 M L.J 39 Appr. I L.R. 1938 Mad 335; Cons I.L.R. 1938 Mad 909=(1938) 2 M L.J 22
———166 Ref (1938) 2 M.L.J 846
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———268 Foll (1938) 2 M L.J 355
———296 Reversed (1938) 1 M L.J 510
———476 (P.C.) Ref I L R 1938 Mad 318
———506 Appl (1938) 1 M.L.J 417, Rel. 32 S.L.R. 162.
———518 Ref. (1938) 2 M L.J. 33.
———541 Rel. (1938) 1 M.L.J 325.
———574 Dist (1938) 2 M L.J. 244.
———677 Ref (1938) 1 M.L.J 320, 750
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———89 Foll (1938) 2 M.L.J 647
———138 Appr 40 Bom L.R 322.
———180 Ref (1938) 1 M L.J. 325.
———231 Appr. and Foll. (1938) 2 M.L.J. 399
———364 Ref I L.R. 1938 Mad 696=(1938) 1 M.L J 216.
———610 Ref (1938) 2 M L J 44
———637 Ref I L R 1938 Mad 439
———735 Ref. I.L.R. 1938 Mad. 867.
(1937) 2 M.L J. 273 Ref. (1938) 2 M L J. 44
———466 Affirm. (1938) 2 M L. J. 1016.
———569 Dist. (1938) 2 M.L.J 31
———717 Ref (1938) 2 M L.J 44
———885 Cons I L.R 1938 Mad. 1100
———885 Ref. (1938) 2 M L.J. 407.
———906 Ref I.L.R 1938 Mad 696; (1938) 1 M.L.J 216.
———931 Ref. (1938) 2 M L J 516
(1938) 1 M.L J. 710 Rel (1938) 1 M L J. 715
(1938) 2 M L.J 918 Appr. (1938) 2 M.L.J. 920.
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4 L.W. 128 Rel I.L.R. 1938 Nag 21.
———291 Dist (1938) 1 M L.J 135.
5 L.W. 151 Ref (1938) 1 M L.J. 406
9 L.W 90 Ref I L.R 1938 Mad. 841=(1938) 1 M.L J 552.
12 L W 7 Rel (1938) 2 M L.J. 923.
———663 Foll. I L.R. 1938 Mad. 841=(1938) 1 M L J. 552 (F.B.).
———767 Cons I.L R. 1938 Mad. 841.
16 L.W. 197 Ref (1938) 2 M L. J. 434
———936 Ref. I. L. R. 1938 Mad 696=(1938) 1 M L.J 216
17 L W. 26 Ref (1938) 1 M L J 139
18 L W 29 Ref I L R 1938 Mad 1007
20 L.W. 185 Ref. (1938) 2 M.L.J. 434.
———943 Ref I L R. 1938 Mad. 933
21 L W. 215 Ref (1938) 1 M L J. 715
———259 Cons (1938) 2 M L. J 923
———398 Not Foll (1938) 1 M L J 113
———606 Rel (1938) 2 M L J 399
22 L W. 347 Ref. I L R 1938 Mad. 1050, (1938) 1 M. L.J 750.
23 L W. 731 Expl and Dist. I.L R 1938 Mad 479
25 L.W. 127 Not Foll. (1938) 1 M L.J. 113.
———299 Ref (1938) 1 M L J 406.
26 L.W. 527 Rel (1938) 2 M.L J. 835
27 L W. 370 Foll. I L R 1938 Mad 621.
———606 Cons. I L R 1938 Mad 841
30 L.W. 129 Ref. (1938) 2 M L.J 452
———583 Not Foll I L R. 1938 Mad 888, Ref (1938) 1 M L J 634
33 L W. 384 Ref I.L.R. 1938 Mad. 315; Rel. (1938) 1 M L.J. 45.
35 L W. 30 Ref. I L R. 1938 Mad. 696=(1938) 1 M L.J. 216.
———305 Cons (1938) 1 M.L.J. 686
36 L.W. 186 Expl. (1938) 1 M.L. J. 113.
———432 Ref. I.L.R. 1938 Mad. 933=(1938) 2 M.L.J. 189.
37 L.W. 288 Ref. (1938) 1 M.L.J. 574.
———723 Ref. I.L.R. 1938 Mad. 933=(1938) 2 M L.J. 189.
38 L.W. 843 Expl (1938) 1 M.L. J. 113
40 L W. 275 Appr. I L R. 1938 Mad 586=(1938) 1 M. L J 334 (F.B.)
41 L W 224 Ref I.L.R. 1938 Mad. 1019.
———752 Foll. (1938) 1 M.L.J. 174.
42 L W. 435 Ref (1938) 1 M.L.J. 325.
———564 Ref. (1938) 1 M.L J. 495
———593 Not Foll. (1938) 1 M.L.J. 113.
———626 Ref (1938) 2 M.L J. 977
———649 Dist (1938) 1 M L J. 803
43 L W. 210 Expl I L.R. 1938 Mad 466=(1938) 2 M.L. J 651.
———624 Rel (1938) 1 M.L.J. 325.
44 L.W. 362 Foll. (1938) 1 M.L. J 450
———476 Rel. I L R. 1938 Mad. 968.
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45 L W. 93 Ref. I L R. 1938 Mad. 348
———276 Ref (1938) 2 M L.J. 44
———394 Ref. I L R. 1938 Mad. 1040.
———422 Ref I L R. 1938 Mad. 696=(1938) 1 M.L.J. 216.
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46 L W. 587 Ref (1938) 1 M.L.J. 487.
———649 Foll (1938) 2 M L.J. 137
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1913 M.W N. 289 Ref. (1938) 1 M L.J 174
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1914 M.W.N. 197 Ref. (1938) 2 M.L.J. 434.
——322 Ref. (1938) 2 M L.J. 523.
——481 Cons. (1938) 2 M.L.J. 270.
1915 M W.N. 225 Cons. and Appr. 42 C.W N. 519.
——761 Ref. (1938) 2 M.L.J. 688
1917 M.W N. 89 Ref. I.L R. 1938 Lah 582
1918 M W.N 340 Ref (1938) 2 M L J 829.
——520 Ref. (1938) 1 M L.J 325
1927 M.W.N 645 Appr. I.L R. 1938 Mad. 902.
1928 M.W N. 127 Ref. (1938) 2 M.L J 623
1930 M W.N 456 Ref. (1938) 2 M L J. 44
——1016 Ref I L R 1938 Mad 696=(1938) 1 M.L J. 216.
1931 M W.N. 1157 Ref (1938) 1 M L.J. 235
1933 M W N. 548 Ref. (1938) 2 M L J 152
——550 Foll. (1938) 1 M L.J. 403
——648 Ref (1938) 1 M L.J. 769.
——1457 Ref (1938) 1 M L.J. 519
1934 M.W.N 272 Foll. (1938) 1 M L.J. 403
——371 Ref 1938 Rang L R. 104.
——812 Disc. and Expl. (1938) 2 M L.J. 461 (F.B)
1936 M W.N. 1315 Ref. (1938) 2 M.L.J. 434.
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——1068 Ref. (1938) 2 M L J. 266.
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2 M.H C.R. 56 Cons. (1938) 2 M.L.J 923
4 M.H C.R. 7 Ref. (1938) 2 M.L. J. 523.
5 M H C.R. 161 Cons (1938) 2 M L.J. 923.
6 M H.C.R. 28 Ref I.L.R 1938 Mad 639. (1938) 2 M.L. J. 161.
——122 Ref. (1938) 2 M.L.J 44.
7 M.H C.R. 233 Foll. (1938) 1 M.L.J. 767.
8 M.H.C.R. 83 Disc. I.L.R. 1938 Nag. 115.

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——360 Ref 40 Bom.L.R. 947.
——529 Appr. 65 I A. 139; 1938 A.L J. 301; (1938) 1 M L J. 731.
——560 Ref. 13 Luck 470.
2 Luck 213 Rel. 13 Luck. 357.
——261 Dist. I.L R 1938 Nag. 10.
——408 Ref. 13 Luck. 689
——464 Dist. I.L.R. 1938 Nag. 280
——662 Foll. 13 Luck 365.
3 Luck. 76 Dist. 13 Luck 697.
——472 Ref 13 Luck. 470
4 Luck. 13 Ref. 13 Luck. 484.
——363 Dist. and Foll. I.L.R. 1938 All. 714 ; Rel I.L R. 1938 All. 218
——429 Diss I L R. 1938 All. 1 ; Ref. 13 Luck 446 ; 42 C W.N 345.
——480 Appr. 42 C.W N. 545.
——529 Ref (1938) 1 M.L J 793
5 Luck. 172 Overr. I.L.R. 13 Luck 101.
——186 Ref 13 Luck. 409
——280 Ref 13 Luck. 135
——305 Ref. 40 P.L.R. 447 ; Rel 13 Luck. 470.
——474 Rel. 13 Luck. 397.
——552 (F.B.) Diss 1938 A.L. J. 955 ; 19 P.L.T. 80 ; Ref (1938) 1 M L.J 316 ; I L.R. 1938 All. 922.
——702 Appr. I.L R. 1938 All. 513.
6 Luck. 202 Rel 13 Luck. 129.
——282 Foll 13 Luck 697.
——365 Ref 1938 O W N. 338.
——497 (F.B) Dist. I L.R. 1938 Nag. 10 ; Not Foll. I.L.R 1938 Nag. 136
——556 Ref 13 Luck. 470
——730 Foll 13 Luck. 697.
7 Luck 16. Ref 13 Luck. 270.
——324 Ref. 40 P.L.R. 447.
——412 (P.C.) Rel. 32 S L.R 80.
——564 Foll. 13 Luck. 697.
——578 Ref. 42 C.W.N. 212.
8 Luck. 168 Foll. 13 Luck. 35 ; Overr. 13 Luck. 101.
——195 Foll. 13 Luck. 376.
——217 Rel. 13 Luck 129.
——354 Ref. 1938 O.W.N. 547.
——377 Rel. 13 Luck. 181.
——477 Overr. 13 Luck 20.
——670 Ref 13 Luck. 541.
——731 Ref. I.L.R. 1938 Lah. 97 ; 40 P.L.R. 509.
9 Luck 178 Ref. 40 P.L.R. 146
——193 (F.B) Rel. I L.R. 1938 Nag. 409.
——435 Rel. 13 Luck 340
——507 Ref. 13 Luck. 523.
——670 Rel. 13 Luck. 181.
——701 Reversed 65 I.A. 219.
10 Luck. 265 Foll. 13 Luck. 560.
——281 Rel. 13 Luck 115
——335 Reviewed 19 P.L.T. 21.
——357 Rel 13 Luck. 159
——407 Dist. 13 Luck. 181.
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11 Luck. 106 Dist. 13 Luck. 279
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25 O C. 137 Dist 1938 O.W.N. 673
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——430 Disc 1938 O W.N. 360
——610 Dist 1938 O W N. 40.
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——740 Rel 1938 O W.N. 573.
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——207 Ref I L R 1938 Lah. 582.
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——451 Ref. 1938 Rang L R 323
——533 Ref. I L R 1938 Lah 582
——557 Diss I L R 1938 Mad. 523
——770 Dist 1938 Rang.L.R. 586.
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——91 Rel I L.R 1938 Nag 280
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3 Rang 39 Foll 40 P L.R. 801
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4 Rang. 125 Ref. (1938) 2 M L J 1045
——249 Rel I L.R 1938 Lah. 417=40 P L.R 235
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5 Rang. 159 Ref. 13 Luck. 255
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——523 Foll. 17 Pat 9
——527 Ref I.L.R. 1938 Nag. 333
——537 Foll 1938 Rang.L.R. 229.
——751 Appr. I.L.R. 1938 Lah. 503=40 P.L.R. 522.
——841 Foll. 1938 Rang L.R. 229
——852 Rel I L.R 1938 Nag. 330.
6 Rang. 1 Diss 1938 Rang L.R. 229
——29 (P.C.) Ref. 1938 Rang. L.R. 303; Rel I L.R. 1938 Lah 398.
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6 Rang. 191 Overr. 1938 Rang.L. R. 660.
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7 Rang 28 Ref. (1938) 2 M.L J. 534, 1938 Rang.L R. 316.
——98 Foll. 1938 Rang L.R. 229.
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——522 Dist 1938 Rang.L.R. 591.
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——635 Ref I L R. 1938 Lah. 10.
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——354 Appr. 1938 Rang L R. 580
——404 Cons 1938 Rang L R. 190; Ref 1938 Rang L R. 30
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——465 Diss. 40 Bom.L.R. 1001; Dist. 1938 O.W.N. 401, Ref 1938 Rang L.R. 430.
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——239 *dicta* Diss. 1938 Rang. L.R. 316.
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——467 Foll. (1938) 1 M.L J. 351.
12 Rang 263 Diss. I.L R. (1938) 2 Cal. 275; Ref. 42 C.W. N. 554.
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——419 Ref. 1938 Rang L.R. 63
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——445 Foll I.L R 1938 Nag. 305
——500 (F.B) Rel. and Appr. I L.R. 1938 Mad. 933= (1938) 2 M L J. 189; Ref. 17 Pat 268=19 P.L T. 579
——530 Disc. 1938 Rang.L.R. 104.
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13 Rang 17 Dist. 1938 Rang.L.R. 692
——22 Cons 1938 Rang.L R. 293
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——156 Cons. 42 C.W.N. 1146.
——325 Foll. I.L R. 1938 Bom. 273=40 Bom L.R. 507.
——457 Foll 1938 Rang L R. 68.
——540 Disc. 1938 Rang.L R. 104.
——623 Cons. I L R.1938 Mad 897=(1938) 1 M L.J. 467.
——648 Foll I.L R. 1938 Mad. 180
——737 Dist. 17 Pat. 96
——754 Ref. 32 S.L.R. 63
14 Rang. 11 Expl 1938 Rang.L. R. 56
——146 Overr 1938 Rang.L. R 360
——215 Ref. 1938 Rang L R. 667
——329 Overr. 1938 Rang L. R. 229.
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14 Rang. 317 Ref I.L.R. 1938 Nag 308.
——494 Dist. 1938 O.W.N. 401; Overr. *pro tanto* 1938 Rang L.R. 430.
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——538 Dist 1938 Rang L.R. 56
——557 Ref. 1938 Rang.L.R. 323
——633 Dist. 1938 Rang L.R 143
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10 L.B R. 161 Diss 1938 Rang L R 468.

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11 Nag L.R. 126 Foll. I.L.R 1938 Nag. 326.
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18 Nag L R. 67 Foll I L.R 1938 Nag. 41.
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26 Nag L R 125 Rel I L.R. 1938 Nag 308
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——347 Foll. I L R. 1938 Nag 289
28 Nag L R 221 Foll I L R 1938 Nag 395
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1937 Lah. 52 Dist. I.L.R. 1938 Lah. 221.
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1923 Mad. 48 Ref. I.L.R 1938 Lah. 97.
——58 Appr. I.L.R. 1938 All. 350=1938 A.L.J 159
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——262 Foll I.L.R. 1938 Nag. 233.
——354 Ref. I.L.R. 1938 All. 767.
——572 Foll I.L R. 1938 Nag 27.
1924 Mad. 453 Ref I L.R 1938 All. 767
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——456 D'st 13 Luck. 242
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——722 Ref I.L R. (1938) 2 Cal. 411.
——743 Disc. 17 Pat. 191.
——971 Dist I.L.R. 1938 Nag 308
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——1084 Dist. I.L R. (1938) 1 Cal. 354; Rel. I L R. (1938) 1 Cal. 531.
1926 Mad 187 Disc. I.L R (1938) 2 Cal. 559
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——225 Appr. (1938) 2 M L J 840.
——325 Rel 13 Luck. 246
1926 Mad. 343 Ref. I.L.R. 1938 All 513; 1938 O.W.N. 433.
——345 Ref. (1938) 1 M.L.J. 769.
——317 Ref. I.L.R. (1938) 1 Cal. 53
——651 Rel. 13 Luck. 246.
——1066 Diss (1938) 2 M L.J. 663.
——1087 Ref I.L.R. 1938 All. 767.
——1109 Dist. I.L.R. 1938 Nag. 308.
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——83 Ref I L R 1938 Bom. 451
——84 Ref 13 Luck. 157.
——216 Ref 40 P.L.R. 188.
——441 Ref. 1938 O W.N 561
——790 Foll 40 P.L.R. 469
——835 Foll I L.R 1938 All. 922.
——937 Foll. (1938) 2 M.L.J 156.
——983 Dist. I.L.R. 1938 Mad 1063=(1938) 1 M L J 471
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——1094 Not Foll (1938) 1 M L.J. 113
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——340 Ref I L R 1938 Mad 381=(1938) 1 M L J 257.
——493 Appr. I.L R 1938 Mad. 326
——713 Ref 13 Luck 65.
——810 Ref 40 P.L R 670.
——1085 Ref 40 P.L.R. 498
——1194 Rel I L R. 1938 Lah 221
——1200 Ref 13 Luck 209
1929 Mad 7 Ref. 40 P.L R J & K 11
——60 (F B) Rel 40 P.L R 821
——187 Cons (1938) 2 M L J 883
——291 Ref 13 Luck 255
——609 Ref (1938) 1 M L J. 471.
——622 Rel (1938) 2 M.L.J 478
——827 Ref. (1938) 1 M L J 487
——841 Cons 40 P L R. 69, Dist I.L.R 1938 Lah 289
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——136 Rel 40 P L R J. & K. 1.
——154 Ref 1938 O W.N 513
——168 Ref I L R. 1938 Mad. 933=(1938) 2 M L.J 189.
——251 Foll. 40 P L R. 709
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——476 Ref 40 P L R. 166.
1930 Mad. 662 Ref. I.L.R. 1938 Mad. 696=(1938) 1 M.L. J 216
——676 Ref. (1938) 2 M.L J. 108.
1931 Mad 828 Ref. 40 P.L.R. 38.
1932 Mad. 7 Ref. 1938 O.W.N. 779
——185 Disc. I.L.R. 1938 Nag. 382.
——408 Foll. I.L R. 1938 Nag. 289.
——535 Appr. (1938) 2 M.L.J. 456
——537 Appr. I.L R. 1938 Mad 902=(1938) 2 M. L J 456
——734 Dist 1938 O.W.N. 401
1933 Mad 112 Foll. 40 P.L R. 819
——185 Diss I L R. (1938) 2 Cal. 275.
——314 Rel. I.L.R. 1938 Lah. 511.
——346 Diss. (1938) 2 M.L.J. 402
——407 Not Foll 40 P L R. 718
——429 Rel. 1938 A L J 913.
——655 Appr. I.L.R 1938 All. 350
——883 Not Foll 17 Pat 281
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——630 Ref 1938 A L.J 235.
——685 Ref (1938) 2 M L.J. 894
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——145 Disc I L R. 1938 Nag. 382
——161 Foll 40 P.L.R. 25
——302 Dist I.L R. 1938 Lah. 289
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——347 Foll 40 P.L R. 469.
——888 Rel (1938) 2 M L.J. 478.
1936 Mad 64 Ref (1938) 2 M.L. J 179
——163 Appr I L R 1938 All. 157
——246 Rel I L R 1938 Lah. 289
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——801 Dist 40 P.L R. 473.
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1937 Mad. 1 Ref (1938) 1 M.L. J. 181
——239 Rel I L R. 1938 Lah. 417
——280 Diss (1938) 2 M.L.J. 632
——301 Ref. 40 P L R. 501
——367 Appr. I.L R. 1938 All 363
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——650 Not Foll. I.L R. 1938 Nag 149.
——753 Ref. 13 Luck. 96.
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——888 Rel. 32 S.L.R. 162.
41 I.C. 9 Ref. 40 P.L.R. 97.
——348 Not Foll. I.L.R. 1938 Lah. 403.
——406 Rel. 1938 O.W.N. 806.
——495 Ref. 19 P.L.T. 485
42 I.C. 259 Ref. I.L.R. 1938 Lah. 581.
——793 Disappr. I.L.R. 1938 A. 513, Ref 1938 O.W.N. 433.
43 I.C. 154 Foll 1938 O.W.N. 480.
——280 Dist. I.L.R. 1938 Lah. 502.
——351 Ref. 42 C W N. 18.
——533 Ref. I.L.R 1938 All. 35.
44 I.C. 353 Ref. 40 P.L.R. 422.
45 I.C. 585 Ref. I.L.R. 1938 All 538.
——613 Ref. 42 C.W.N 18.
46 I.C. 465 Ref. 1938 O.W.N. 722.
——848 Ref. I.L.R. 1938 Lah. 251.
——964 Foll 40 P.L.R. 479.
47 I.C. 639 Rel. 13 Luck. 162
49 I.C. 273 Ref. 1938 A.L.J. 668.
——734 Ref. 42 C.W.N. 1059
——752 Appr. I.L.R. 1938 All. 840.
——758 Ref. 40 P.L.R. 166.
50 I.C. 394 Appl. I.L.R. 1938 All. 114.
——847 Appr. I.L.R. 1938 All. 750
——886 Ref. I.L.R. 1938 Nag. 361.
51 I.C. 391 Dist. 1938 O.W.N. 454.
——501 Rel. 32 S L.R. 8.
——963 Dist. 13 Luck. 35.
52 I.C. 749 Ref. I.L.R. 1938 Bom. 723.
53 I.C. 970 Ref. 40 P.L.R. 286.
54 I.C. 84 Ref. I.L.R. 1938 Mad. 933=(1938) 2 M.L.J. 189.
——241 Disc. 19 P.L.T. 461.
55 I.C. 19 Ref. 13 Luck. 96.
——226 Not Foll. (1938) 2 M. L.J. 740.
——234 Ref. (1938) 1 M.L.J. 873.
——450 Ref I.L.R. 1938 Lah. 103.
——481 Ref. 40 P.L.R. 280.
——763 Appr. 19 P.L.T. 240.
——983 Rel. 13 Luck. 76.
——990 Dist. I.L.R. 1938 Lah 417.
56 I.C. 47 Ref. (1938) 1 M.L.J. 610.
56 I.C. 259 Dist. 13 Luck. 373.
57 I C. 248 Rel I.L.R. 1938 Lah. 490.
——904 Ref. (1938) 1 M.L J. 873.
——982 Rel. I.L.R. 1938 All. 500.
——998 Ref. 19 P.L.T. 380.
59 I.C. 655 Ref. I.L.R. 1938 Lah. 188
60 I.C 310 Rel. 13 Luck. 531.
——520 Foll 40 P.L.R. 506.
61 I C. 628 Ref. 13 Luck. 242.
——774 Rel I.L.R. 1938 All. 829.
——889 Rel. I L.R. 1938 Nag. 342.
62 I C. 1 (F.B.) Ref (1938) 1 M. L.J. 113.
——180 Ref. I.L.R. 1938 Lah. 611.
——303 Ref 13 Luck. 20.
——829 Ref. I.L.R. 1938 Mad. 988
——833 Ref 13 Luck. 122.
63 I.C 87 Ref. 40 P.L.R. 300.
64 I.C 520 Ref. I.L.R. 1938 Lah. 296
——726 Rel. I.L.R. 1938 Nag. 160.
——751 Foll. 42 C.W.N. 405.
65 I.C. 305 (P.C.) Ref. I.L.R. 1938 Lah. 271.
——477 Ref. 40 P.L.R. 286.
——654 Ref. 13 Luck. 122.
66 I.C. 501 Rel. 13 Luck. 373.
67 I.C. 31 Rel. I.L.R. 1938 Lah. 173.
——76 Rel. I.L.R. 1938 Lah. 246.
——299 Foll. 40 P.L.R. 160.
——744 Appl. I.L.R. 1938 Lah. 296.
68 I.C. 182 Ref. 13 Luck. 96.
——188 Ref. 40 P.L.R. 280.
——412 Foll. I.L.R. 1938 Lah. 188.
69 I.C. 704 Ref. 19 P.L.T. 325.
70 I.C. 212 Ref. 19 P.L.T. 383.
——582 Ref. 40 P.L.R. 300.
71 I.C. 727 Ref. 42 C.W.N. 391.
——847 Ref. I.L.R. 1938 Lah. 103.
——937 Not Foll. I.L.R. 1938 Lah. 403.
73 I.C. 519 Ref. I.L.R. 1938 Lah. 611.
——902 Ref. 1938 O.W.N. 806.
74 I.C. 1 Ref. 13 Luck. 96.
——679 Ref. 19 P.L.T. 243.
75 I.C. 667 Ref. 13 Luck. 397.
——737 Ref. I.L.R. 1938 Lah. 251.
——917 Ref. 13 Luck. 157.
76 I.C. 25 Overr. I.L.R. 1938 Lah. 640.
——767 Not Foll. 17 Pat. 281.
77 I.C. 888 Ref. I.L R. 1938 Lah 188.
78 I.C. 232 Dist. 13 Luck. 357.
——270 Rel. 13 Luck. 531.
——443 Ref. 40 P.L R. 54.
——919 Dist. (1938) 1 M.L.J. 450.
79 I.C. 66 Foll (1938) 1 M.L.J. 450.
——894 Ref. 13 Luck. 689
81 I.C. 176 Ref. 19 P.L.T. 665.
——343 Ref. 42 C.W.N. 729.
82 I.C 970 Ref. 19 P.L.T. 380
83 I.C. 133 Ref 19 P.L.T. 383.
84 I.C. 698 Ref. I.L.R. 1938 All. 767.
——952 Ref. 13 Luck. 96.
85 I.C. 366 Dist. 1938 O.W.N. 841.
——459 Foll. 17 Pat. 308.
——594 Ref 42 C.W.N. 1209
——1010 Foll. 17 Pat. 84.
87 I.C. 568 Ref. 19 P.L.T. 383.
——652 Ref. 40 P.L.R. 97.
——1017 Ref. 40 P.L.R. 143; 300.
88 I.C. 1049 Dist. 40 P.L.R. 757.
89 I.C. 437 Ref. 40 P.L.R 74.
——596 Rel. 13 Luck. 96.
——956 Ref. 40 P.L R 74.
——977 Foll I.L.R. 1938 Nag. 160.
90 I.C. 621 Disc. 19 P.L.T. 352.
——774 Dist. 19 P.L.T. 240; Ref. 42 C.W.N. 18.
91 I.C. 657 Ref. 42 C.W.N. 967.
92 I.C. 980 Ref. I.L.R. 1938 Lah. 103.
93 I.C. 688 Foll 40 P.L.R. 798.
——956 Dist. I.L.R. 1938 Lah. 173.
94 I.C. 168 Ref. I.L.R. 1938 Lah. 296.
——444 Foll. I.L.R. 1938 Nag. 348.
——707 Dist. 1938 O.W.N. 841.
95 I.C. 79 Ref. 40 P.L.R. 501.
97 I.C. 417 Ref. 40 P.L.R. 501.
——437 Ref. 13 Luck. 344.
——441 Ref. I.L.R. 1938 Lah 296.
——604 Disc. 19 P.L.T. 456.
98 I.C. 75 Rel. I.L.R. 1938 All. 741.
——599 Disc. 19 P.L.T. 297.
100 I.C. 241 Ref. 40 P.L.R. 319.
——917 Ref. 40 P.L.R. 544.
101 I.C. 277 Foll. 42 C.W.N. 1055.
——647 Dist. 42 C.W.N. 378.
——674 Foll. 40 P.L.R. 631.
102 I.C. 9 Dist. 40 P.L.R. 91.
——628 Dist. 40 P.L.R. 631.
——852 Rel. I.L.R. 1938 Lah. 345.
103 I.C. 38 Ref. I.L.R. 1938 Lah. 10.

103 I.C. 454 Ref 40 P.L.R 591.
104 I.C. 336 Ref. I.L.R. 1938 Lah 10.
——630 Ref. I.L.R. 1938 Mad. 348.
105 I.C. 58 Ref. 17 Pat. 210.
107 I.C. 4011 Disappr. (1938) 1 M.L.J. 33.
108 I.C. 398 Ref. 19 P.L.T. 268.
110 I.C. 463 Ref. 1938 O.W.N. 595.
——571 Dist. 42 C.W.N 1028.
111 I.C. 169 Dist. 19 P.L.T. 432.
——433 Dist. 42 C.W.N. 674.
112 I.C. 402 Foll. 40 P.L.R. 630.
——670 Ref. 40 P.L.R. 74.
113 I.C. 240 Disc. 19 P.L.T 352.
——263 Ref. 1938 A.L.J. 668.
116 I.C. 632 Ref. 19 P.L.T. 21.
118 I.C. 392 Ref 13 Luck. 96
119 I.C. 423 Dist. I.L.R. 1938 Lah. 318.
123 I.C. 412 Not Foll 19 P L.T. 566
125 I.C 33 Rel. I L.R. 1938 Lah. 435.
——100 Dist. 40 P.L.R. 22.
126 I.C. 650 Foll. 42 C.W.N. 1164.
127 I.C. 641 Not Foll. 42 C.W.N. 18.
128 I.C. 920 Foll. 40 P.L.R. 151.
129 I.C. 224 Ref. 40 P.L.R. 501.
131 I.C. 456 Rel. 40 P.L.R. J.& K. 1.
132 I C. 6 Ref. 40 P.L.R. 432.
——209 Rel. I.L.R. 1938 Lah. 485.
133 I C. 615 Ref. 40 P.L.R. 300.
134 I.C. 254 Foll. (1938) 2 M.L.J. 846.
136 I C. 205 Foll. I.L.R. 1938 Nag. 233.
139 I.C. 106 Expl. 19 P.L.T. 461.
——589 Rel. I.L.R. 1938 Lah. 221.
140 I.C. 544 Ref. 19 P.L.T. 21
141 I.C. 707 Ref. 19 P.L.T. 579.
——825 Disc. I.L.R. (1938) Lah 341 ; Foll. 40 P.L.R. 196.
142 I.C. 552 Ref. 40 P.L.R. 92
143 I.C. 635 Ref. 13 Luck. 428
145 I.C. 687 Dist. I.L.R. 1938 Lah. 511.
146 I.C. 239 Appr. I.L.R. 1938 Lah. 155.
——566 Disc. and Not Foll. 19 P.L.T. 8.
147 I.C. 794 Reviewed 19 P.L.T. 21.
151 I.C. 294 Disc. I.L.R. 1938 Lah. 148.
——316 Not Foll 19 P.L.T. 101.
152 I C. 541 Foll. I.L.R. 1938 Nag 233.
153 I.C. 717 Ref. 42 C.W.N. 38.
154 I.C. 948 Reviewed 17 Pat. 236.
——985 Ref 13 Luck. 20.
156 I.C. 402 Ref. 19 P.L.T. 8.
158 I.C. 24 Ref. 40 P.L.R. 819.
159 I C. 350 Not Foll. 19 P.L.T. 133
163 I.C 152 Ref. 42 C.W.N. 1232.
164 I.C. 305 Ref 19 P.L.T. 8.
165 I.C 720 Dist. 42 C.W.N. 618.
167 I.C. 941 Appr. I L.R. 1938 All. 192.
170 I.C. 33 Dist. 42 C.W.N. 1216.
172 I.C. 697 Ref. 42 C.W.N. 1216.

THE

YEARLY DIGEST, 1938.

I—INDIAN DECISIONS.

ABADI.
See (1) C. P. LAND REVENUE ACT
(2) CUSTOM (PUNJAB).
(3) LANDLORD AND TENANT

ABANDONMENT—Claim. *See* C P CODE, O 23, R. 1.

——Holding *See* (1) AGRA TENANCY ACT, S. 107
(2) BENGAL TENANCY ACT, S. 87
(3) LANDLORD AND TENANT.

ABATEMENT—Of suit.
See (1) C. P. CODE, O. 22, R. 4.
(2) AGRA TENANCY ACT, S 44.

——Of appeal. *See* C. P. CODE, O 22, RR. 4, 9 AND 11

ACCOUNTS *See also* (1) DEBTOR AND CREDITOR.
(2) LIMITATION ACT, S. 19.
(3) PARTNERSHIP
(4) STAMP ACT, ART 1.

——Suit for—Accounts forged—Relief
A I R 1938 Pat 42

——*Suit for—Assignment of definite sum due from principal—Right of assignee to sue for account.*

Where, what is assigned to the [illegible] the Official Receiver of an ex-broker's [illegible] definite sum of money due fro[illegible] and not a right to sue for accou[illegible] dition of account for the recove[illegible] assigned is incompetent (*Add[illegible] JJ.*) JAINI BROTHERS & CO [illegible]
178 I C 176=A I R [illegible]

——*Suit for—Interest—When can be allowed*

The plaintiff in a suit for rendition of accounts relating to a number of properties with which they alleged that the defendant had dealt co sharer on behalf of themselves, whil[illegible] their plaint the relief asked expressly f[illegible] only The defendant had also filed [illegible] plaintiffs for accounts Both sides were found liable to account and the defendant was allowed interest to be calculated apparently on balances as they stood f[illegible] year to year

Held that the suit was not one in which [illegible] before date of final settlement ought to have been allowed, assuming that the Court had discretion to allow it, which it was perhaps doubtful Interest would fairly be payable only on the amount found due on a balance of both accounts (*Coldstream and Monroe, JJ*) VIDYA WANTI KAUR *v* SHAHDEV SINGH
A I R 1938 Lah 139.

ACCOUNTS SETTLED—*Reopening of—Principles—Settlement between person who has just come of age and person in fiduciary position—Duty of latter—Former dispensing with production of accounts and taking gross sum as balance after taking competent advice—Right to reopen.*

If persons meet and agree not to ascertain the exact balance due on accounts, but agree to take a gross sum as the balance, which one is willing to pay and the other is content to receive, it is obvious that the production of vouchers is entirely out of the question, for the very object of the parties is to avoid the necessity for producing these vouchers. But when one of the parties to the transaction has just attained the bare age of majority, and the other party stands in a fiduciary relationship, the Court will jealously watch such a transaction, and it is the duty of the party standing in fiduciary relationship to make a full disclosure of the state of the account. The latter must affirmatively prove that the weaker party was a free agent and had independent and disinterested advice Where it is established that the weaker party had competent and independent advice, and that there was neither importunity nor persuasion on the part of the other party, who was prepared to produce all the accounts, but that the party who had just come of age was, though young, very shrewd and dispensed with the production of the [illegible]

[illegible] another [illegible] remote *building—Conditions.*

[illegible] allowed to [illegible] a *bona fide* [illegible] that he has title and then it appeared that he had no title but was misled by the acquiescence of the owner (*Stone, C.J. and Bose, J*) ABDUL RAZAK *v* SETH NANDLAL
1938 N L J. 317=A I R 1938 Nag 506.

ADJUSTMENT *See* C P. CODE, O 23, R. 3

ADMINISTRATION—*Preliminary decree drawn up—Further steps to be taken.*

Where a preliminary decree for administration has been drawn up, nothing more is required from the Court beyond giving directions to the administrator or the receiver or whoever it is who is in charge of t[illegible]

ADMINISTRATION.

estate, as to the lines the administration ought t
and the only other decree which can be passed
administration is the final decree, which will
that the estate had been administered and whic
allot out of the assets remaining in the hands of the Court or the administrator the various shares to the parties entitled to receive them. Hence after the p. liminary decree, a supplementary decree cannot passed by the Court on the application of a credit (*Baguley and Mosely, JJ.*) A.T.N.A.T. CHOCKALINGA CHETTIAR *v.* KO MAUNG GYI.

A.I.R. 1938 Rang. 37.

——*Suit for—Party claiming less share in plaint—Right to proper share*

share being awarded to him in the judgment. (*Mosely and Dunkley, JJ.*) OON CHAN THWIN *v.* KHOO ZUN.

177 I C 501=11 R R. 134= A I R 1938 Rang. 254.

ADMISSION—*Waiver—Difference between*

There is a distinction in law between waiver and admission, in the case of waiver a pe
held to have waived a right of which
ignorant, but in the case of a represe
sion which is acted on, the party r
plead ignorance unless it is induced by
for if he does not choose to enquir
takes the risk of error. (*Lord Thankerton.*) SHYAM SUNDER SINGH *v.* KALURAM AGARWALA.

176 I C 2=42 C W.N 1041=19 Pat L T. 561= 48 L W. 199=1938 M.W.N. 814= 1938 O L R 344=1938 A W R (P C) 186= 68 C L J 145=1938
1938 A L R 672=
1938 P W.N. 612=

ADVERSE POSSESSION.

See also (1) LANDLORD AND TENANT.
(2) LIMITATION ACT, ART. 144

- **Acquisition of title.**
- **Acts of possession and nature of.**
- **Co-owners.**
- **Co sharers.**
- **Essentials**
- **Guardian and ward.**
- **Hindu widow.**
- **In erruption**
- **Landlord and tenant.**
- **Limited interest**
- **Mortgage right**
- **Religious endowment.**
- **Vacant land.** *See* **Adverse Possession—Essentials**
- **Void alienation—Possession under.**
- **Wakf property.**
- **Waste land**
- **What constitutes.**

——Acquisition of title—Khoti land—Wrong transfer by occupancy tenant—Possession by transferee for over 12 years—Effect of. *See* BOMBAY KHOTI SETTLEMENT ACT, SS. 6 AND 8. 40 Bom L R. 390.

——*Acquisition of title—Possession in pursuance of settlement of disputes between brothers—No dispute for nearly 50 years—Possession ripening into ownership*

Where in settlement of a dispute between two brothers as to the succession to an estate, the younger brother was given certain properties by way of maintenance and

ADVERSE POSSESSION.

remaining
remained
rs, it was
and his representatives had been adverse to the younger brother and his representatives for more than the period of 12

of.
must vary with the
ession is to be exer-
d Mehta, J.) TAHIL-

176 I.C 549=11 R S. 22=A I.R. 1938 Sind 132.

——*Co-owners — Hostile possession by one—What amounts to.*

Where one co-owner asserts a title hostile to his co-owners, he must do so by an open and unequivocal assertion of a hostile title. The possession must be

A.I R. 1938 Sind 132.

——*Co-sharers—Exclusive possession of some—Effect of—Ouster—Partition—If amounts to.*

The exclusive possession of co-sharers cannot be adverse to a person who is also a co-sharer with them
title Mere partition between
enial of his title or his ouster.
MADKI.
N. 278=A I R. 1938 Nag. 89.

——*Essentials—Continuous possession—What is.*

In order to give title as against the rightful owner, adverse possession must, among other things, be continuous Overt acts of possession are only evidence from which adverse possession has to be inferred. Merely because the acts are separate, it does not follow the possession was not continuous. There is a difference between cessation of user and cessation of possession and the one does not necessarily lead to the other. Where for more than the statutory per od, the adverse possessor not only treated the disputed land as his own but intended to exclude the others including the rightful owner from possession, and whenever an occasion arose it was the adverse possessor who exercised possession and not the rightful owner, the facts give rise to an inference of title by adverse possession in spite of the gaps in the evidence as to acts of possession during the aforesaid period. (*S.K. Ghose and Patterson, JJ.*) BHABANI PRASANNA LAHIRI *v.* MANINDRA CHANDRA ROY.

42 C.W.N 1209.

——*Essentials of—Vacant land—Exclusion of owner—Inference as to adverse possession, when justified—Application of rule as to possession following title.*

Possession cannot be adverse unless it is held in such

possession cannot be adverse unless the owner is in denial of his title excluded from enjoyment. Possession to be adverse must be notorious, exclusive and.

ADVERSE POSSESSION.

hostile. In the case of a vacant land the same kind of possession cannot be expected as in the case of an occupied land or building and where there is no effective intrusion the Court will be justified in giving effect to the principle of law that possession follows title. (*Venkatasubba Rao and Abdur Rahman, JJ.*) ATCHAYYA PATRUDU v. JALALUDDIN SAHIB.

178 I C. 301=(1938) M.W.N. 185=47 L W. 202=A.I R 1938 Mad. 454=(1938) 1 M.L J 190.

——*Guardian and Ward—Possession of guardian—If adverse to ward.*

Where a guardian is in possession of ward's property

Nag 89.

——*Hindu widow—Possession of mother-in-law—When on behalf of widow—If adverse.*

Where a Hindu dies leaving his widow, and her mother in-law takes possession of the property, it is

possession only on behalf of her daughter-in-law. (*Varadachariar and King, JJ*) RAMAYYA v. LAKSHMAYYA. 177 I C. 225=11 R M 276=(1938) M W.N. 1032=A.I R 1938 Mad 513.

——*Hindu widow—Possession of—If can be adverse to reversioners.*

Where a widow takes possession of the property after the death of the last male holder as a Hindu widow with a limited estate and there is nothing to show that the character of her title or possession was altered at any time, such possession could not be adverse to her husband's reversioners and any rights which she acquires by reason of her possession wo to the estate of her husband to whic reversioners are entitled to succeed. possession therefore cannot be tacked on to that of her alienee (*Coldstream and Din Mohammad, JJ.*) GANGA RAM v. NAURATA RAM.

40 P.L R. 616=A I.R. 1938 Lah 187

——Interruption—Attachment—Twelve years' possession not complete on date of atta Effect—Suit by claimant after ex Plea by adverse possession—Sus CODE, O 21, R 63

——Interruption —Boundary Survey Officer—If interrupts unsuccessful claimant—Right of possession in subsequent suit. AND BOUNDARIES ACT, S 13. 48 L W 595.

——*Interruption—Party in adverse possession held to the rightful owner in suit—Effect of—Appellate Court holding possession wrongful—Party continuing in possession—Adverse possession—If interrupted by decree of trial Court.*

Where a person is in wrongful possession of another's land to the latter's exclusion and to his knowledge, the former is in adverse possession of the land The fact that a subsequent decree of Court declares th person in possession is the owner of the property ground for holding that he is in possession und decree of Court. Possession which was adverse that decree still remains adverse Merely bec. wrong order is made by the trial Court recognisir possession—even though that possession is held to be wrongful by the final decision on appeal—the possession which was adverse before does not cease to be adverse

ADVERSE POSSESSION.

by reason of the decree in the trial Court. (*Rangnekar and Wadia, JJ.*) NARAYAN JIVAJI v. GURUNATHGOUDA. 40 Bom L.R. 1134.

——*Interruption—What amounts to entries in record of rights, or receipt for assessment—Effect of.*

Whether continuity of the possession be broken by flood or by draught, or because the nature of the land itself is such that it is not susceptible of continued acts of user or possession, once there is a breach in the continuity of adverse possession, the chain of years is broken and the land reverts to its rightful owner.

In a suit for adverse possession of certain Maho-

be, for grazing purposes and appropriated the grazing fees. Such possession by the plaintiff was for more than the statutory period. No ejectment suit was ever brought. But the defendant, who was entitled to such lands by sale, got entries made, got receipts for the payment of assessment, for payment of boundary marks, got com- money when some land was acquired by ent, and got the entries made in the Record of

Held, that the defendant's possession was paper possession only, and the plaintiff had acquired a title by adverse possession. (*Davis, J C. and Mehta, J.*) TAHILRAM TACKCHAND v MT. MIRAL.

176 I C 549=11 R S. 22=A I R. 1938 Sind 132.

——*Landlord and tenant—Death of a tenant at will—Suit against son for possession—Plea of adverse possession—Starting point.*

In the case of a tenancy at will, the possession of the tenant becomes that of a wrongdoer as soon as the tenancy terminates Where such a tenant died and the landlord sued his son it was held that the tenancy was 'was nothing had the right (*Stone C.J. and Bose, J.*) ABDUL RAZAK v. SETH NANDLAL.

1938 N L.J 317=A I R 1938 Nag. 506.

——*Landlord and tenant—Essentials—Adverse possession against tenant—Effect as against landlord.*

To establish adverse possession against a landlord it

A I R. 1938 Pat 220.

——*Landlord and tenant—Permanent tenancy—Acquisition of—Essentials—Assertion by tenant—Adjudication in judicial proceeding—Effect of.*

A permanent tenant right can be acquired by adverse possession In such a case it is enough for the tenant pleading adverse possession to show that he continued in open and hostile possession for over the statutory period after asserting his right in an earlier judicial

——*Landlord and tenant—Sub lessee from tena under unauthorised transfer—Possession of—adverse to landlord.*

——Limited interest—Landlord and tenant—Suit for rent—Plea of rent-free holding—Decree holding land rent free—Effect of—Possession by tenant for over 12 years without paying rent—Acquisition of rent-free tenure *See* C. P CODE, S 11. 48 L W. 701= (1938) 2 M.L.J. 934.

——*Mortgage right—Acquisition by mere oral assertion.*

A contract cannot be brought into existence by prescription, and no one can, by ... acquire rights as against a true o... (*Wort, A C J and Manohar* ... MIAN *v.* RADHIKA KUMARI DE... 170 I.C 35=11 R... 1938 P W N. 789= ...

——*Religious endowment—Exclusion of shebait by person having no title—Physical presence of idol or performance of puja by wrongdoer—If material.*

An idol acts through its shebait, prosecutes and defends suits through its shebait. Its shebait is its protector and defender of its rights. An exclusion of shebait accordingly from the endowed properties ... have the effect of excluding the idol from it. In cases of adverse possession, the extent of the inte... ... upon the asser...

that law—the reason apparently being that according to that law human ownership in such property ceases and it vests in the Almighty. This feature of 'wakf' or dedicated property is not peculiar to Mahomedan Law and the position as regards dedicated property is

... ' But this does ... a valid title to ... sion over twelve ... ng such adverse ... sts not on Maho-

...MITTEE, AMRITSAR. 175 I C. 945=11 R.L. 91= 40 P.L.R. 319=A.I.R. 1938 Lah. 369 (F B.).

—*Waste land—Construction of temporary chhap-*

...e construction of some temporary chhappars on a ... which is lying waste is not sufficient in law to ...lish adverse possession, although such chhappars ... been surrounded by an enclosure consisting of bushes. (*Bhide, J*) SHAH NIWAZ *v.* GHULAM SHAH. 40 P.L.R. 91=176 I C. 930= 11 R.L. 251 (1)=A I.R. 1938 Lah. 324.

——*What constitutes—Hindu in possession of mosque for over 12 years—User inconsistent with the character of the building—Abandonment—Plea of ignorance—If available.*

Where a Hindu has been in possession of the building of a mosque for over 12 years and has been exerci-...

...abandonment could not ... adverse possession. 'It is sufficient that the possession be overt and without any attempt at concealment so that the person against whom time is running ought, if he exercises due vigilance, be aware of what is happen-...

they remain unaware of acts of misuse by the owner of ...ses in which the mosque is situated, it is not ... them to say that by the exercise of due ... ey could not be aware of what is happening. ... J.) MUSAHEB KHAN *v.* ... 1938 O A. 722= ... O. 62=1938 O.L.R. 435= ...=A I.R. 1938 Oudh 238.

... MADRAS AND VIZAGA-

...CT ACT, SS 187 AND 237. ...AL AND AGENT.

... (XI OF 1922), S. 4 ... *in Revenue Papers*

... the meaning of the Agra Pre-emption Act, a ... share in ... of a ... nat of ... of a ... m to ... matter ... ahal. (*Iqbal Ahmad, J.*) PHUL CHAND *v.* DHARAM CHAND. 175 I C. 603=10 R A 698= 1938 A L.R. 463=1938 A W R. (H C) 164= 1938 R D. 491=1938 A L.J. 325= A.I.R 1938 All. 514.

AGRA PRE-EMPTION ACT (1922), S 4

——**S 4 (1)**—*Mahomedan waqf—Right of pre emption, if can be claimed by*

Where a *waqf* represented by the mutwalli sued for pre-emption, on a contention that the suit is not main tainable as the plaintiff is not a person contemplated by S. 4 (1) of the Pre emption Act

Held, that for purposes of procedure, in the case of *waqf* the mutwalli represents the *waqf* property and estate under O 31, C P Code, there is no defect or difficulty in the conception of God Almighty as a juristic person in the case of a Mahomedan *waqf*.

Held, further, that the plaintiff had a perfect right of pre-emption and that no disability whatever, attaches to the juristic rights in the case of a *waqf* (*Bennet and Ismail, JJ*) WAKF BANAM KHUDAWAND KARIM *v.* RAJ KALI I L.R 1938 All. 206=10 R.A 553=1938 A L R 255=174 I.C. 241=1937 A L J. 1337=1938 A.W.R. (H C.) 15=A.I.R. 1938 All. 157.

——**S. 4 (1) and (7)**—*'Petty proprietor'—Who is—If a co-sharer.*

Where by a deed of exchange a person acquires only a particular number, that is a particular field in a ... 'petty proprie- ... re-emption Act, ... in the Mahal. ... L *v.* SHEO PRA- ... =11 R A. 93=176 I.C. 386=1938 A.L R. 610=1938 A.W.R. (H C.) 348=1938 A L J. 534=A I.R. 1938 All. 382

——**Ss 5 and 3**—*Agreement conferring right of pre-emption not embodied in wajib-ul-arz—Such right, if enforceable.*

A right of pre-emption given by an agreement amongst the co-sharers of a village, but which is not ...

——**S 6**—*Sale under S. 5 of U. P. Regulation of Sales Act—Nature of—If gives rise to right of pre emption.*

A sale by the collector of zamindari property under the provisions of S 5 of the U. P. Regulation of Sales ...

——**S. 12, Classes 3 and 4**—*Determination of class of pre-emptors—Rules governing*

... mahal whose component parts have not been divided and sub divided. The class of pre emptors provided for by S 12 must be determined with reference to the constitution of the mahal on the date of the sale and not with reference to the constitution of the mahal on some earlier date. (*Iqbal Ahmad, J.*) PRAN SINGH *v.* MANGAL SINGH. 174 I C. 914=10 R.A. 638=

AGRA TENANCY ACT (1901), S. 13

1938 A L R 347=1938 A L J. 156=1938 A W.R (H.C.) 133=A I R. 1938 All. 208.

——**S. 12 (1) (v)**—*'Co sharers in the village'—If includes owner of a share in the mahal.*

The intention of the legislature in enacting the words 'co sharers in the village', in S. 12 (1) (*v*) of the Agra Pre-emption Act was that the owner of a share in a mahal or the sole proprietor of a mahal should have a right of pre emption in a different mahal in the same village Hence an owner of a half share in a mahal can claim to pre-empt property which is in another mahal in the same village (*Bennet and Verma, JJ*) DIN DAYAL *v.* SHEO PRASAD.

I L R. 1938 All 623=176 I C 386=11 R A. 93=1938 A L R. 610=1938 A W R. (H C) 348=1938 A.L J 534=A.I.R. 1938 All. 382.

AGRA TENANCY ACT (III OF 1926).

——**(II OF 1901) AND (III OF 1926)**—*Fixed rate ... areas—Orchards ... ange in the law —Compensation.*

... an orchard of ... grove prior to new Tenancy Act, and the fixed rate tenant sued the sub-tenant for ejectment, it was held that the plots do ...

(*Darling, S.M. and Bomford, J.M.*) MAHESH SINGH *v.* MT MOOLA.

1938 R D. 656=1938 A.W.R. (B.R) 239=1938 A L J. (Supp) 86.

——**Ss 13 and 14**—*Occupancy rights—Acquisition of—Proof of continuous possession—Shifting of*

AGRA TENANCY ACT (1926), S. 19.

tion for correction of khataum—Maintainability—Proper remedy—Liability to ejectment.

Occupancy rights lapse in any plot of an occupancy holding which becomes a grove, the occupancy rights therein are superseded by grove rights, and when the grove disappears the grove-holder becomes a non occupancy tenant in the plot, the former occupancy rights not reviving on the plot ceasing to be grove. Where, however, the former occupancy tenants manage to retain their occupancy rights in sp

the grove plot, a transferee

claim the same rights. Occ

ferable and the transferee

rights from the recorded occupancy tenants. All that the transferee can acquire are grove rights which are extinguished on the disappearance of the grove. Thereafter the transferee is either a sub tenant or a trespasser who has never been admitted, or at best a non occupancy tenant. He is not entitled to apply for correction of the khatauni to establish his claim to occupancy rights. His proper remedy is to bring a regular suit under Ss. 121-123

if he is not content with the en

if he fails to establish his cl

tenant and is declared a me

under S. 21 of the Act, he is

with by the zamindar. (*Darl*

ABID HUSAIN. 1938 R D. 124.

——S. 19—*Fallow land—Accrual of statutory rights.*

A person who has taken a

has never cultivated it cannot

and a mere misdescription of

tenant in a receipt for rent

of statutory rights. (*Bomf*

v. NARAIN RAO PATNIS.

——S. 19—*Re admission of proof.*

When a tenant has been ejected it is for him to prove that he has been re-admitted,

sion, the mere acceptance of rent

constitute admission of tenancy,

committed by the zamindar in

occupancy tenant in a suit f

construed as an act of re-admi

and Bomford, J.M.) MOH-

MANNA.

——S. 20 (2), Prov. (1) (b)—*'Proceedings' meaning of.*

'Proceedings' in S. 20 (2), proviso 1 (*b*) must be taken to mean effective proceedings. (*Darling, S.M. and Bomford, J.M.*) KALKA PRASAD *v.* RAHUA.

1938 A.W.R. (B R.) 167 = 1938 R.D. 551

——S 23—*Mortgagee of occupancy holding—Suit for rent against tenant—Facts to be proved—Plea as to mortgagee's defective title—If sustainable.*

When a mortgagee of an occupancy holding sues his sub-tenant for rent, he has to prove the contract of tenancy. If such a contract existed or by a course of conduct the sub tenant was paying rent to the mortgagee in possession, in that case, the fact that the mortgagee had derived his title

void transfer would not be a

able against the plaintiff.

RAM *v.* JAN KHAN. 1

24—Applicability

AGRA TENANCY ACT (1926), S. 24.

RENT ACT (XII OF 1881), S. 8 1938 R.D. 121 = 1938 A.W.R. (B.R.) 72.

——S. 24—*Co-sharing.*

It is necessary for co-sharing in cultivation, that there should be pooling of one's own cattle and the implements of cultivation. (*Darling, S.M. and Bomford, J.M.*) REOTI PRASAD *v.* MANGALI

1937 R.D. 443 = 1937 A.W.R. 1028.

——S. 24—*"Co sharing"—Meaning of—Proof.*

he claims to have co shared the mere fact that he may have helped the latter over the holding would not amount to co sharing (*Darling, S.M. and Bomford, J.M.*) PEAREY LAL *v.* KUNJAL

1937 A.W.R. 869 = 1937 R D. 397.

——S. 24—*Co-sharing—What constitutes.*

Mere management does not imply co-sharing; there

1938 A.W.R. (B.R.) 165.

——S. 24—*Co sharing—What constitutes—Minority*

father, however much they helped in the agricultural

parated sons of an occu-

share in their father's

M. and Bomford, J.M.)

1938 R.D 177 =

1938 A.W.R. (B R.) 110

——S. 24—*Sharing in cultivation—Proof—Holding sub-let at the time of death of tenant and for a long time before—Effect.*

A person cannot claim to have shared in the cultivation when the plots comprising the holding were so sub-let

a long ti

J.M.)

——S 24—*Succession—Daughter's son not sharing in cultivation—Right of.*

A daughter's son has no right to succeed to the occupancy holding of his grandfather unless he has co-

his grandfather

him the right

mford, J.M.)

37 R.D. 443 =

A.W.R. 1028.

Succession—Death of one of several brothers in preference to separated

brothers who are en-

are joint with him

AGRA PRE-EMPTION ACT (1922), S 4

——S 4 (1)—*Mahomedan waqf—Right of pre emption, if can be claimed by*

Where a *waqf* represented by the mutwalli sued for pre-emption, on a contention that the suit is not maintainable as the plaintiff is not a person contemplated by S. 4 (1) of the Pre emption Act

Held, that for purposes of procedure, in the case of *waqf* the mutwalli represents the *waqf* property and estate under O 31, C P Code, there is no defect or difficulty in the conception of God Almighty as a juristic person in the case of a Mahomedan *waqf*

Held, further that the plaintiff had a perfect right of pre-emption and that no disability whatever, attaches to the juristic rights in the case of a *waqf* (*Bennet and Ismail, JJ*) WAKF BANAM KHUDAWAND KARIM *v.* RAJ KALI

I.L.R 1938 All 206 = 10 R.A 653 = 1938 A.L.R 255 = 174 I C. 241 = 1937 A L J 1337 = 1938 A W.R. (H C) 15 = A.I.R. 1938 All. 157

——S 4 (1) and (7)—*'Petty proprietor'—Who is—If a co-sharer.*

Where by a deed of exchange a person acquires only a particular number, that is a particular field in a Mahal, he comes under the definition of 'petty proprietor' in S 4, sub-S (7) of the Agra Pre-emption Act. He cannot claim to be a 'co-sharer' in the Mahal (*Bennet and Verma, JJ*) DIN DAYAL *v.* SHEO PRASAD

I.L.R 1938 All 623 = 11 R A 93 = 176 I.C. 386 = 1938 A.L.R. 610 = 1938 A.W.R. (H C) 348 = 1938 A L J. 634 = A I.R. 1938 All 382

——Ss 5 and 3—*Agreement conferring right of pre-emption not embodied in wajib-ul-arz—Such right, if enforceable*

A right of pre-emption given by an agreement amongst the co-sharers of a village, but which is not incorporated in the wajib-ul-arz, is excluded from the purview of S 5 of the Agra Pre-emption Act, as S. 3 of the [illegible]

ti [illegible]

ti [illegible]

p[illegible] of Pre-emption Act. (*Iqbal Ahmad, J.*) AMBIKA PRASAD *v.* MST. NAZIRAN BIBI.

1938 A W R. (H C) 736 = 1938 A L J. 1066

——S 6—*Sale under S. 5 of U. P. Regulation of Sales Act—Nature of—If gives rise to right of pre emption.*

A sale by the collector of zamindari property under the provisions of S 5 of the U. P. Regulation of Sales Act, is not [illegible]

is a sale [illegible]

such no r[illegible]

Ahmad, [illegible]

PRASAD [illegible]

——S. 12, Classes 3 and 4—*Determination of class of pre-emptor*

The provis[illegible]

emption Act [illegible]

sale there are [illegible]

[illegible]

tion of the mahal on the date of the sale and not with reference to the constitution of the mahal on some earlier date. (*Iqbal Ahmad, J.*) PRAN SINGH *v.* MANGAL SINGH. 174 I C. 914 = 10 R.A. 638 =

AGRA TENANCY ACT (1901), S 13.

1938 A L R 347 = 1938 A L J. 156 = 1938 A W R. (H C) 133 = A.I R 1938 All. 208.

——S 12 (1) (v)—*'Co sharers in the village'—If includes owner of a share in the mahal.*

The intention of the legislature in enacting the words 'co sharers in the village', in S. 12 (1) (v) of the Agra Pre-emption Act was that the owner of a share in a mahal or the sole proprietor of a mahal should have a right of pre emption in a different mahal in the same village Hence an owner of a half share in a mahal can claim to pre-empt property which is in another mahal in the same village. (*Bennet and Verma, JJ.*) DIN DAYAL *v.* SHEO PRASAD.

[illegible]

AGRA TENANCY ACT (III OF 1926).

——(II OF 1901) AND (III OF 1926)—*Fixed r[illegible] avas—Orchar[illegible] ange in the l[illegible] —Compensati[illegible]*

[illegible] an orchard [illegible] grove prior [illegible] new Tenancy Act, and the fixed rate tenant sued th[illegible]

[illegible]

of Act of 19[illegible] MAHESH SING[illegible]

[illegible] A. W.R. (B.R.) [illegible] 1938 A.L.J. [illegible]

——Ss. 13 and 14—*Occupancy* [illegible] *of—Proof of continuous* [illegible]

AGRA TENANCY ACT (1901), S. 58.

In a suit to eject the defendant as heir of a statutory tenant, proof of continuous possession from 1319 F. onward throws on the plaintiff the burden of proving in his turn that the tenure before 1323 F. could not be reckoned towards the acquisition of occupancy rights ... 1 ... IN

1938 A.L.J. (Supp.) 65.

——S 58—*Suit under—Compromise admitting contesting defendant to occupancy holding—Effect on subsequent suit for division of holding by member of another branch.*

Where on the death of the holder of an occupancy holding, the zamindar filed a suit under S. 58 of the Old Tenancy Act against all his presumptive heirs, but it was contested only by a member of one branch and was eventually compromised by him by which he was admitted to the occupancy holding and where later on the members of another branch of the original holder sued for partition of the holding it was held that in view of the decision in the prior suit, it was for the plaintiffs in the later suit to prove possession, if they wished to prove their co tenancy. (*Darling, S M and Bomford, J.M.*) RAM SUMER MISRA *v.* RAM NIRANJAN MISRA.

1938 A W R (B R) 209=1938 R.D 670.

——(III OF 1926)—*Applicability—Widow succeeding to husband under Act of 1881 and dying after 1926—Succession to—Law applicable.*

The law of succession to be followed in the case of a tenancy is the law as it stands on the date when the succession opens In the case of widow tenant who succeeds under Act XII of 1881, but who dies after the enactment of Act III of 1926, it is the latter Act that governs succession to the widow. (*Darling, S. M. and Bomford, J.M*) RAMDAYAL *v.* BINDESHWARI PRASAD 1938 R D. 121=1938 A.W.R 72 (B R).

——*Interpretation—Reference to former Act—Permissibility.*

Per *Iqbal Ahmad, J.*—Agra Tenancy Act of 1926 is a consolidating and amending Act as is apparent from its Preamble. In order to appreciate the full significance and import of an amendment int... by the Act reference must of necessity be ma... sions of the former Act. (*Bennet, Ahmad, Collister, Bajpai and Gang...*) DULAR PANDEY *v.* NANDA BUDHAI.

I L R (1938) All. 563=11 R A. 61=
1938 A L R 578=1938 A L J. 585=
1938 A W R (H C.) 385=176 I C 226=
1938 R D 628=A I R. 1938 All 396 (F.B.).

——*Suits under—Technicalities—Reliance upon—Principle as to.*

It is a sound principle that technicalities should not be pressed too far in suits under Tenanc... *ling, S. M. and Bomford, J. M*) TIKO... CHAND. 1938 R D 1=1938 A W ...

——Ss 3 and 242—*Order under S. ...—If a decree under Tenancy Act—Appea...*

An order under S. 144 ...

suits and decrees in suits. So an appeal does n... the District Judge under S. 242 from an order under S. 144 ...

AGRA TENANCY ACT (1926), S. 4.

——S. 3 (7)—"*Sub-tenant*"—*Grantee of* muafi khidmati—*Person holding under—Status of—Ss. 187 and* 188.

It cannot be held that there can be no sub tenant of a rent free grantee holding a *muafi khidmati*. A service grant is liable to have rent fixed under S. 187 of the Agra Tenancy Act, though it may also be resumed under S. 188. A person holding from such a grantee is a sub-tenant as defined by S. 3 (7) of the Act. (*Darling, S.M. and Bomford, J.M.*) BADRI TEWARI *v.* BECHAI CHAMAR. 1938 R D 160=
1938 A.W.R. (B.R.) 91.

——S. 3 (14)—Decree—Meaning of—If includes determination of any question under S. 47, C. P. Code. *See* AGRA TENANCY ACT, SS. 249 AND 3, CL. (14).
1938 A.L J. 63.

——S. 3 (15)—*Grove—Area of 7 biswas containing 10 full grown mango trees—If grove.*

Where in a small area of 7 biswas there are 10 full grown mango trees, the plot is certainly a grove, however those trees are arranged. The fact that some casual cultivation is possible does not matter, when the trees preclude any considerable portion of the land being used primarily for any other purpose. (*Darling, S. M. and Bomford, J. M.*) SARDHA DIN *v.* MASURIADIN. 1938 R D. 147=1938 A.W R. (B R) 80.

——S 3 (15)—*Grove land—Plots occupied by guavas and plum trees.*

Plum trees though not specifically mentioned in the explanation to the definition, are similar to guavas and peaches. Hence plots occupied by guavas and plum trees are not grove land within the definition of the Act. (*Darling, S M*) MASIT ULLAH *v.* SARDAR SINGH.
1938 A.W.R (B R) 237 (1)=1938 R D 659=
1938 A L J. (Supp.) 81.

——S. 4 (d)—*Land if* 'sir'—*Test.*

Unless a plot of land is recorded as *khudkasht* in 1333 F. it cannot become '*sir*' under S. 4 (*d*) of the Agra ... SARB...

——S. 4 (d)—*Mortgage by co sharer—Mortgagee ... and acquiring sir rights— ...or—Prior mortgagee paid ... can claim to be recorded ... by the prior mortgagee—His remedy.*

Where one of the two co-sharers executes a mortgage in favour of the other with full rights to admit and eject tenants and such mortgagee by taking land into *khudkasht* acquires *sir* rights in such land under S. 4 (*d*) of the Agra Tenancy Act, a subsequent mortgagee from the same mortgagor who pays off the prior mortgagee, ...

——Ss. 4 (d) and 14 (2)—*Construction*—'*Culti-*...

...eference to S. 4 (*d*) or 14 (2) of ... the word 'cultivated' does not ... 'ploughed' and provided that no

AGRA TENANCY ACT (1926), S 8

other party is put in possession of the land, it is difficult to see why cultivation should not cover a normal period of fallow, more especially where the fields are included in a farm, the whole of which will not normally be under the plough every year without a rest (*Darling, S. M. and Bomford, J M*) JUGUL KISHORE TANDON v RAO NARSINGH RAO. 1938 A W R. (B R) 35= 1938 R D 306

——S 8 (3)—*Lease of* nautor *land—Construction—If constitutes reclamation contract—Accrual of statutory rights—If barred.*

Where it is stated in the body of a lease of *nautor* land that it is given to the tenant for cultivation, and there are no special conditions of any kind in the kabuliyat executed by the tenant, the lease cannot be said to be a reclamation contract, by virtue of which the accrual of statutory rights is barred. (*Darling, S.M.*) TUFAIL HASAN v BHAGWANT SINGH 1937 R D. 485

——S. 14—*Ex-proprietary rights accruing in* Sir *while in possession of trespasser*—Sir *holder recovering* [illegible]

[illegible] prietary rights which had accrued in the *Sir* while it was in the possession of the trespasser. (*Darling, S.M. and Bomford, J.M.*) BHAIRO PRASAD SINGH v. BHIRGUNATH SINGH. 1937 R D 451.

——S. 14 (2)—Construction—'Cultivated'—Meaning. *See* AGRA TENANCY ACT, SS. 4 (*d*) AND 14 (2) 1938 A.W.R (B.R.) 35.

——S 15 (2)—*Surrender of ex-proprietary rights not completed—Effect—Rights of vendor of* Sir *plots* [illegible]

[illegible] and rent fixed thereon. If he happens to be not in possession, he has his remedy under S. 99 of the Tenancy Act The vendee in such a case has only himself to blame for not having insisted on the completion of the surrender prior to the completion of the sale (*Darling, S M. and Mehta, J M.*) SURTI v. KUNJI MAL. 1938 R.D. 885.

——S 15 (3)—*Surrender by mortgagor of ex proprietary rights—Awarding of ex proprietary rights by S.D O in spite of surrender—Remedy, if can be had under correction section of Land Revenue Act or by regular suit.*

Where though a mortgagor had surrendered his ex-proprietary rights, nevertheless the S. D. O. rightly or wrongly awards ex-p [illegible] abrogated by summary [illegible] sections of Land Reven [illegible] to question those rights [illegible] suit. (*Darling, S.M.* [illegible] SINGH v. UMRAO SINGH. 1938 A W R. (B R) [illegible]

——S. 15 (5)—*Applicability*— [illegible] *as to delivery of possession to* [illegible] *Waiver.*

Where a proprietor executes a m [illegible] plots and makes a statement therein that he has [illegible]

AGRA TENANCY ACT (1926), S. 18.

1938 A L J. (Supp.) 52= 1938 A.W.R (B R) 223.

——S 16—*Company, if could acquire occupancy right—Mere shareholders in business rather than actual cultivators.*

The question whether a recorded tenant, a company can acquire occupancy rights, depends upon whether the partners regarded themselves as a number of partners cultivating as partners and co-tenants under the Act or an association engaged in the business of cultivating not in any personal capacity but as shareholders in a business. When their whole conduct suggests that they were shareholders in a business rather than actual cultivators in any personal capacity, such a company cannot acquire occupancy rights. (*Darling, S. M. and Bomford, J.M.*) MACKINNON v. SAMPAT KUMAR SINHA. 1938 R D 4=1938 A.W R 16 (B.R.).

——S. 17—*Occupancy rights—Grant of—Lambardar admitting persons as joint in tenancy with female occupancy tenant—If confers rights on persons so admitted.*

The fact the lambardar admits some persons as [illegible] it, cannot [illegible] hts of the [illegible] persons [illegible] KOMIL v [illegible] D. 114= 1938 A.W.R. (B R) 53.

——Ss. 17 and 21—*Person recorded along with widow of occupancy tenant—Zamindar also suing him for rent—Status of such person on death of widow.*

Where the name of a person was recorded in the *Khatauni* along with that of the widow of the occupancy tenant with the knowledge of the Zamindar, and the Zamindar also treated him as tenant not merely in suing him for rent but in arresting him in the course of [illegible] is not, on the [illegible] as a trespasser [illegible] fact that the [illegible] nt constitutes no [illegible] occupancy rights in the holding. Under S. 45 of the Agra Tenancy Act, he has three years from the death of the widow in which to apply for fixation of rent and consolidation of his status as a statutory tenant. If he fails to do that, he will be liable to ejectment as a non occupancy tenant (*Darling, S. M. and Bomford, J. M.*) JAFAR ALI KHAN v. MAIKU. 1937 R D. 560.

——Ss 17 (1) (b) and 265 (2)—*Perpetual lease by lambardar conferring occupancy rights—All co sharers not concurring—Effect—Position of lessee*

A lambardar without the written concurrence of all co-sharers has no authority to confer occupancy rights on any one as laid down in Cl. (1) (*b*) of S. 17, but [illegible]

——Ss. 18 and 121-123—*Applicability—Occupancy*

AGRA TENANCY ACT (1926), S. 19

tion for correction of khatauni—*Maintainability—Proper remedy—Liability to ejectment.*

Occupancy rights lapse in any plot of an occupancy holding which becomes a grove, the occupanc[illegible] therein are superseded by grove rights, and grove disappears the grove-holder becomes a [illegible] pancy tenant in the plot, the former occupancy r[illegible] reviving on the plot ceasing to be grove. Wh[illegible]ever, the former occupancy tenants manage to retain their occupancy rights in spite of the disappearance of the grove plot, a transferee from them is not entitled to claim the same rights. Occupancy rights are not transferable and the transferee does not acquire any such rights from the recorded occupancy tenants All that the transferee can acquire are grove rights which are extinguished on the disappearance of the grove. Thereafter the transferee is either a sub tenant or a trespasser who has never been admitted, or at best a non occupancy tenant. He is not entitled to apply for correction of the khatauni to establish his claim to occupancy rights His proper remedy is to bring a regular s[illegible] If he is n[illegible] if he fail[illegible] tenant ar[illegible] under S[illegible] with by t[illegible] ABID H[illegible]

——S 19—*Fallow land—Accrual of statutory rights*

A person who has taken a lease [illegible] has never cultivated it cannot beco[illegible] and a mere misdescription of such [illegible] tenant in a receipt for rent does [illegible] of statutory rights (*Bomford,* [illegible] v NARAIN RAO PATNIS [illegible]

——S. 19—*Re-admission of e[illegible] of proof*

When a tenant has been ejected, it is for [illegible] prove that he has been re-admitted. If he retain[illegible] sion, the mere acceptance of rent from him [illegible] constitute admission of tenancy, nor can a [illegible] committed by the zamindar in misdescribing him as an occupancy tenant in a suit for arrears of rent be construed as an act of re-admission (*Darling, S.M. and Bomford, J.M.*) MOHAMMAD ASGHAR v. MANNA 1937 R D. 378.

——S 20 (2), Prov. (1) (b)—*'Proceedings' meaning of.*

'Proceedin[illegible] to mean eff[illegible] *Bomford, J*[illegible]

——S. 23 [illegible] *for rent against tenant—Facts to be proved—Plea as to mortgagee's defective title—If sustainable.*

When a mortgagee of an occupancy holding sues his sub-tenant for rent, he has to prove the contract of tenancy. If such a contract existed or by a course of conduct the sub tenant was paying rent to the mortgagee in possession, in that case, the fact that the mortgagee had derived his title under a voidable or even void transfer would not be a[illegible] able against the plaintiff. RAM v. JAN KHAN.

——S. 24—Applicability and scope—Tenant under [illegible]

AGRA TENANCY ACT (1926), S. 24.

RENT ACT (XII OF 1881), S. 8. 1938 R D. 121=1938 A.W.R. (B.R.) 72.

——S 24—*Co-sharing*

[illegible]

——S 24—*"Co-sharing"—Meaning of—Proof.*

Co-sharing involves a pooling of cattle and the implements of husbandry, and in the absence of evidence that the claimant had pooled his cattle and implements of husbandry along with those of the person with whom he claims to have co shared the mere fact that he may have helped the latter over the holding would not amount to co sharing. (*Darling, S.M. and Bomford, J.M*) PEAREY LAL v. KUNJAL 1937 A.W.R. 869=1937 R.D 397.

——S. 24—*Co-sharing—What constitutes.*

Mere management does not imply co-sharing ; there [illegible]

——S 24—*Co sharing—What constitutes—Minority* [illegible]

father, however much they helped in the agricultural [illegible]

—*Right of succession.*

Quaere.—Whether the separated sons of an occupancy tenant have a right to share in their father's inheritance. (*Darling, S.M. and Bomford, J.M.*) SUKHDEO v. KRISHNA LAL. 1938 R D. 177=1938 A.W R (B R) 110

——S. 24—*Sharing in cultivation—Proof—Holding* [illegible] *of death of tenant and for a long* [illegible] claim to have shared in the cultiva[illegible]s comprising the holding were so [illegible] a long t[illegible] *J.M*)

——S. 24 —*Succession—Daughter's son not sharing in cultivation—Right of.*

A daughter's son has no right to succeed to the occupancy holding of his grandfather unless he has co-[illegible]

[illegible] *ference to separated* [illegible] others who are en[illegible] are joint with him

are entitled to the share of the deceased brother to the exclusion of the divided brothers. Bu of definite and strong evidence of suc the brothers would be entitled. The the brothers are sons of a different m father is not conclusive of the fact of separation (*Bomford, J.M.*) MANS TEWARI

——S. 24—*Succession t right to succeed a mahant.*
A chela has no right occupancy rights of a mah be in connection with the r NANDAN GIR *v.* BAWAN

——S. 24—*Succession of daughter*
It is clear that a daughter cannot succeed to the occupancy rights of her father. (*Darling, S.M. and Bomfor*

——
—*Uncle and uncle's son—Rights of.*
On the death of a tenant of an undivided holding, his uncle takes the whole of his share as against his another uncle's son (*Darling, S.M. and Bomford, J.M.*) CHANDRIKA DUBE *v.* BANSDEO MISRA.
1937 R. D. 454.

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——S. 24—*Widow tenant—Re-marriage—Re-admis*

ment, when the
(*Darling, S.M.*
ZAHID ALI.
——S. 25—*W*
—*Ejectment—Limitation.*
Where a widow of an occupancy tenant re married in

came into force—Devolution of tenancy.

Per *Bennet, Ag. C. J.*—Where an occupancy tenant

nearest surviving heir of the last male tenant in accord-

mean "in the case of a male tenant's death" and the words do not imply that the male tenant should die
apply
ho has
erefore
comes under S. 24 of Act III of 1926 and the collaterals who shared in the cultivation are entitled to succeed, and the widow comes in under S. 25 (1) as a "widow of class 2 in S. 24."
Per *Iqbal Ahmad J. concurring on different grounds.*—S. 6, U. P. General Clauses Act, cannot be

ed by S. 24.

a male tenant.
Per *Bajpai, J., dissenting.*—The succession to the
e would be
et, Ag. C.J.,
Nath, JJ.)

1 R.A. 61=
L J. 585=
6 I C. 226=
396 (F.B.).

ity—Wid succeeding to husband as co-tenant under Act of 1

AGRA TENANCY ACT (1926), S. 26.

Death of after 1926—Succession—Daughter's son not co sharing with grandfather—Rights of.

The son of the daughter of a widow who succeeded

Act of 1901, would not make S. 25 (2) applicable. (*Bomford, J.M.*) MAHADEO MALLAH *v.* RUM DAS MALLAH. 1938 R.D. 123 = 1938 A W R 84 (B.R.).

——S. 26—*Inheritance—Competition between separated brother and nephew*

Under the tenancy law as amended by S. 26 of the

——S 29 (4)—*Unregistered lease—Possession in*

——S 29 (6)—*Bene*

If entitled to.

MUKARRAM ALI KHAN *v* PURAN. 1938 R.D. 421 = 1938 A.W R (B R) 179 = 1938 A L J. (Supp.) 29.

——Ss. 32 and 99—*Tenant filing surrender but not paying process fee and resiling from same—Effect—Landlord ejecting sub-tenant—Right of tenant under S 99, for illegal ejectment.*

Under S. 32 of the Agra Tenancy Act to consti surrender which would extinguish the interest o tenant, there must be cessation of cultivation. A mere notice of surrender does not constitute surrender. A tenant who files a surrender but who never pays the

on the alleged surrender, that amo
ment of the tenant giving the latte

limited to the lifetime of the tenant or for 10 years whichever is shorter. The section cannot be read as covering the lifetime of the successors of the original mortgaging tenant. The fact that a person holds under a valid mortgage is not by itself a ground on which he can claim the benefit of S. 32 (2) (*Darling, S.M. and*

AGRA TENANCY ACT (1926), S. 37.

Bomford, J.M.) BALGOVIND *v.* SATNARAIN LAL. 1938 R.D. 174 = 1938 A.L J. (Supp.) 2 = 1938 A.W R. (B R.) 93.

cession—Widow tenant —Sub letting of entire ther village—Right of

as acquired occupancy rights in a holding in her own right leaves the village and retires to another village after sub letting her whole holding, her daughter's son who does not even allege co-sharing with his grandfather cannot succeed to the widow on her death and is not entitled to be recorded as occupancy tenant in succession to the widow. (*Darling, S.M. and Bomford, J.M.*) RAM DAYAL *v* BINDESH 1938 R.D. 121 = 38 A.W.R. 72 (B R.).

d scope—Partition of of Civil Court—If

ding that S. 37 of the ll lands held under one grant. The section is It is only in the cases

C. 646 = 10 R.A 405 = 0 = 1937 A W R. 949 = = A.I.R 1937 All. 794

cation by recorded tenant for partition under S. 37—Possibility of opposition from landlord—Suit under S. 121, if necessary.

A tenant who has been recorded as a co-tenant in proceedings under S. 42 of the Tenancy Act, is entitled to sue under S. 37 for partition of his share. The

——Ss 37 and 121—*Co tenant seeking possession against tenants in possession—Proper remedy*

A co tenant who is out of possession and desires he Ten allenged laratory (*Dar*- DHARI D 584.

taneous of one proce- rder of

landlord landlord and the former suit is decreed and the latter dismissed, if appeals are filed in both suits, the appellate Court should refrain from passing any final order in one of them, when he remands the other suit to the lower court for further inquiry, when the same questions are exactly in issue in each case. To allow the appeal in one and to remand the

AGRA TENANCY ACT (1926), S. 37.

other is not the correct or proper procedure. (*Darling, S.M. and Bomford, J.M.*) RENUKA RAI v. SHYAM DUTT RAI. 1938 R D 133= 1938 A.W.R 81 (B R.).

——**Ss. 37 and 99**—*Recorded co-tenant—Right to apply for partition under S 37—Zamindars supporting defendants—If affects plaintiff's right.*

A suit by a recorded co-tenant under S. 37 of the Tenancy Act, cannot be met by the plea that the suit ought to be under S. 99 as the zamindars are supporting the defendants, for the possession of one co tenant is the possession of all co-tenants and as the defendants have not been ousted, it cannot also be said that the plaintiff has been ousted. (*Bomford, J* ... GANESH, 1938 R.D. 232=1 ...

——**S 37**—*Right to apply for* ... *Dismissal of a prior suit bila ta* ...

Under S. 37 of the Agra Tenancy Act one or more co-tenants of a holding can apply for division thereof The fact that a prior suit for division of the holding was in fact compromised, but the suit was dismissed *bila tajwiz* cannot deprive a plaintiff of his right under the Act. (*Darling, S M*) NAIN SUKH v SUKHI 1938 A.W R (B R) 351=1938 R.D. 849.

——**S 37**—*Transfer contrary to—Suit for ejectment—Forum*

Where area of the fixed rate tenancy is held ...

particular cases. Hence the suit for ejectment under S 82 or for injunction under S. 85 (3) would lie in the Revenue Court. (*Bennet and Verma, JJ*) KASHI KAHAR v. ASHARFI SINGH. 1938 A.L J. 720= I L R 1938 A. 754=177 I C 450=11 R.A 199= 1938 A L R. 747=1938 A W R (H C) 522= 1938 R D 714=A I R 1938 All 511.

——**S 40**—*Application under—Duty of Collector—Local inspection—Necessity.*

When an application under S 40 of t ... is made for the acquisition of certain la ... treated by the Collector as judicial proce ... inspection by the Collector is absol ... (*Darling, S.M and Marsh, J M*) ... PRASAD v. MANSAB 1938 A W ...

——**Ss 40 and 41**—*Application under—Summary dismissal on applicant's failure to appear in person—Propriety.*

Where an application under Ss. 40 and 41 of the Agra Tenancy Act for the acquisition of certain occupancy and statutory holding is summarily dismissed by the Collector on the ground that the applicant has failed to appear in person, though he is represented by his own general attorney and by a Court Mukhtar, the sum- ...

due ...

rents before the date on which they fall due (*Darling, S.M and Bomford, J M*) RAM CHANDRA v. RAGHUNATH SINGH 1938 R D. 175=1938 A W R 42 (B.R.)

——**S 44**—*Applicability—Co widows—Remarriage of one—Death of other co-widow—Suit by zamindar*

AGRA TENANCY ACT (1926), S. 44.

against remarried widow for ejectment—Maintainability.

Where one of two co widows left by a deceased tenant re-marries, the occupancy tenancy continues to subsist so long as the other co-widow who has not remarried is alive, notwithstanding the remarriage of one of them. On the death of the co widow who has not remarried, the zamindar is entitled to assert his rights by treating the re married widow as a trespasser on the ground of her re-marriage which comes to his notice. (*Darling, S.M.*) BUNDI BEGAM v MUSTAFA HUSAIN KHAN. 1937 A.W R 871=1937 R D. 413.

——**S 44**—*Applicability—Joint holding—One tenant* ...

Act, the other tenants are no longer the co-tenants of that tenant If these other tenants, do not allow the tenant getting his share divided to take physical possession of his share, but flout the orders of the revenue Court by keeping him out of possession, they are trespassers pure and simple and can be ejected as such. (*Bomford, J M*) CHITTAR v JHUNVA 1938 R D 110=1938 A W R. 50 (B.R).

——**Ss. 44 and 82**—*Applicability—Land validly let* ...

... S 44 of the Agra Tenancy Act only applies to a case where a person has taken possession of the landholder's land without his consent and in contravention of the provisions of the Act It is only then that the landholder can treat the occupier as a mere trespasser and sue him in a Revenue Court for ejectment Where, however, the land had been validly let to a tenant who was in lawful possession thereof, and the latter has transferred it to another person, S. 44 cannot apply. To ...

... 1937 A L J 1204=A I R 1937 All 790.

——**Ss 44 and 86**—*Applicability—No exproprietary rights claimed on mortgage of sir—Suit to eject non occupancy tenant in sir—Section applicable.*

Where no ex proprietary rights are claimed on the mortgage of *sir* land, the non-occupancy tenant in *sir* continues to be non occupancy tenant and a suit to eject him should be brought under S. 86 and not S 44 ... Act. (*Darling, S M. and Bomford,* ... PRASAD PANDE v LALTA ... R D 549=1938 A W R. (B R.) 244.

... 107 (2)—*Applicability—Occupancy* ... *permitting his sons to divide it* ...

divide the holding between themselves and received the rent from them and continued to be responsible to the landlord, and where after several years he served a notice to quit on one of the sons and on his refusal to leave filed a suit under S. 44 of the Agra Tenancy Act.

AGRA TENANCY ACT (1926), S. 44.

Held, that the case was covered by S. 44, for the son was obviously retaining possession without the consent of the immediate landholder and against the provisions of the statute.

Held further, that S. 107 (2) might only apply if the whole ... had been left in the charge of the son
concerr
charge,
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PRASA

——

—Plea of surrender and new admission by zamindar—Zamindar's support, if converts suit into one under S. 99—Effect on limitation—Procedure to be followed

Where a suit is filed under S. 44 of the Tenancy Act and the defendant pleads that there was a surrender by plaintiff and that be got the lands from the zamindar, then if such plea is supported by the zamindars, the suit becomes one under S. 99 and ought to be changed accordingly and fresh issue framed as to limitation. In such a case where the plaintiff became aware of the hostile attitude of the zamindars only
suit under S 44, the suit as filed was
time. (*Darling, S M. and Bomford,*
PRASAD *v.* BINDRABAN. 1938 A W

——Ss 44 and 45—*Applicability—*
on in possession in spite of ejectment for over 12 years —Effect—Suit by landlord under S. 44 if lies—Proper remedy

The defendants who were formally ejected in 1923 managed to hold on to the plots and to retain possession for more than 12 years, there was no
any regular re-admission to the tenancy
of the defendants continued in the *khataun*
the ejectment, and there was a settlement th
year In a suit by the zamindar for ejectment under S. 44 of the Agra Tenancy Act,

Held, that it was impossible to believe that the
plaintiff-zamindar had no knowledge of the
settlement, that the defendants had acquire
rights and that they were therefore prot
ejectment.

Held, further, that it was open to the
bring a suit under S 45 of the Act for the assessment
of rent c
J.M)

——S
time.

In a suit under S. 44 of the Agra Tenancy Act, it is

of.

The mere execution of a deed of sale of an occupancy holding does not give rise to a cause of action to eject the vendee, it only arises on the actual transfer to the

AGRA TENANCY ACT (1926), S. 44.

——Ss. 44 and 95—*Ejectment—Plea of admission —Onus—Re-admission —Oral evidence—Admissibility —Ejected person re-entering into occupation—Position of.*

In a suit for ejectment if the defendant pleads that he is not a trespasser as he has been admitted to ten-
the admission. As
ntion of the Act that
such cases and oral
who re-enters into
the written consent
of the landlord remains liable to ejectment for 12 years as a trespasser. He takes possession at his own risk. (*Darling, S.M. and Bomford, J.M.*) BADRI NARAIN LAL *v.* SURJA RAM. 1938 A.W.R (B.R.) 206 = 1938 RD. 652.

——S. 44—*Ejectment—Suit by a co sharer lambardar—Application by the other co-sharer to be made a party—Dismissal of suit, in spite of—Propriety.*

Where a suit for ejectment under S 44 of the Tenancy Act is filed by one of the co-sharers lambardar and

——S. 44—*Lambardar—Power to eject co-sharer taking possession without his consent of abandoned holding.*

A lambardar can eject a co sharer who without his consent takes possession of land vacated by a tenant, or

——S 44—*Lease by co sharer, pending partition proceedings—Leased plots falling to share of another co-*

such plots is only in the position of a trespasser and

1938 A.W.R (B R) 192.

——S 44—*Liability to ejectment—Person not a ... without permission.*

ithout the owner of the trees
such person plants without
trespasser on the land and he
under S. 44 of the Tenancy
id Bomford, J.M) RAM
BIJAI PRASAD SINGH.
= 1938 A.W.R (B R) 247.

——S. 44—*Limitation—Allotment at a partition—If opens a fresh period.*

The allotment of a plot to the patti of a plaintiff at a recent partition, cannot have the effect opening out a

AGRA TENANCY ACT (1926), S. 44.

In a suit to eject as trespasser a widow tenant who has remarried the period of limitation runs from the date on which the ... ledge of the remarria ...
J M.) MT TETRA

——S. 44—*Limi* ... *Hindu widow with* ... *reversioner—Starting point of limitation*

In the case of a lease given by a Hindu widow holding a life interest, it is not open to a reversioner of her husband to attack the lease so long as the lessor-widow is alive; and the limitation of twelve years for a suit by the reversioner to eject the lessee under S 44 of the Agra ... only from the date of

——S 44—*Limitation—Partition of sir land—Holder of divided plot—Suit for ejectment of trespasser —Defendant in possession as mortgagee—Limitation—Starting point—Plaintiff's knowledge of mortgage right prior to confirmation of partition—Effect.*

A suit to eject the defendants from a field which the ...

——S. 44—*Limitation—Starting point—Knowledge, possession of defendant—If means personal knowledge of zamindar.*

In the case of large estates the knowledge of posses ...

... *mortgagor's sub-tenants—If liable to be ejected as*

——Ss 44 and 107—*Occupancy tenancy—Mortgage —Tenant not recorded as 'Mafrur' but mortgagee re-*

AGRA TENANCY ACT (1926), S. 44.

corded as mortgagee—Surrender by tenant—Mortgagee, if can be ejected.

Where an occupancy tenant who leaves the village is ... ncy ... by ... agee ... , *J.* ... 1=
1938 A L J. (Supp.) 112.

——Ss. 44, 86 and 92—*Prior suit under Ss. 86 and 92 against defendant as sub tenant—Dismissal for default—Subsequent suit against same person under S. 44 as trespasser—If maintainable.*

Where an earlier suit under Ss 86 and 92 of the Agra Tenancy Act in which the defendant was sued as a sub-tenant, was dismissed for default, a subsequent suit under S 44 of the Act against the same defendant treating him as a trespasser after the tenant in chief had abandoned his ...

——S. 44—*Procedure—Suit by holder of sir plot allotted on partition—Defendant proved to be mortgagee of plot—Procedure—Remedy of defendant—Right of plaintiff to possession*

Where in a suit for ejectment under S. 44, by a person who gets *sir* land on partition, the defendant ... that he ... mortgagee of the plot that ... n- ... d. ... ty ... dy ... D ... = ...).

——S 44 — *Purchaser of proprietary share — Demarcation of vendor's Sir land and fixing of separate rent—Rights of vendee, on ejectment of ex proprietary tenant.*

——Ss 44 and 99—*Scope—Co-sharers—Ejectment*

——S 44—*Scope of—Trespasser in possession—Remedy of owner—Option as to*

It is open to the proprietor of agricultural land either to sue a trespasser for ejectment in the Civil Court or to avail himself of the speedier remedy provided by S. 44 of the new Tenancy Act and to file a suit for ejectment and for ... *and Ve*... FULA K...

——Ss. 44 and 99—*Suit to eject trespasser—No plea as to non joinder of recorded tenants-in-chief—Later objection—Procedure to be followed.*

Where in a suit to eject as a trespasser a person recorded as *quabiz*, no plea was specifically taken as to the non-joinder of all the recorded tenants-in chief but later on the objection is raised, it is unnecessary to make them parties If the recorded ... have any rights there is nothing to prev... asserting their rights under S 99, if aft... trespasser, the plaintiff either takes the ... own cultivation or puts in another tenant. (*Darling, S M and Bomford, J.M.*) SHEO NARAIN *v* SHEO RATAN, 1938 A.W R (B R) 156=1938 A.L J. (Supp.) 18=1938 R D. 248

——S 44—*Suit by recorded* sir *holders for ejectment of defendants as trespassers—Joint mahal—Existence of other co sharers—Existence of* sir *rights—Materiality.*

The existence or otherwise of *sir* rights is a very material question in a case where the plaintiffs sue as recorded *sir* holders for the ejectment of the defendants under S 44 of the Tenancy Act as trespassers For if the land is *khalsa* the suit would be bad if it is only by some of the co sharers. (*Darling, S.M and Bomford, J.M.*) RAM KARAN SINGH *v.* RAM BARAN DUBE 1938 R D. 376=1938 A W.R (B R.) 217=1938 A.L J. (Supp) 56.

——S 44—*Suit under—Pleadings—Contents.*

When a landlord brings a suit under S. 44 of the Agra Tenancy Act he must be certain of the position that he has to take. His pleading must contain a clear statement that the area has been settle... and that the person proceeded against ... trespasser. He cannot plead that so... possession and a third person has trespa... plot. In that case the trespass would be against the person who is in possession and as such the suit would have to be dismissed. (*Darling, S. M. and Mehta, J.M.*) AMARJIT SINGH *v.* THAGRAM 1938 R D 836

——S. 44—*Suit under—What are proper issues.*

In a suit under S 44 of the Tenancy Act, the proper ...

... 1938 A.W.R. (B R.) ...

——S 44—*Suit under, by a zamindar, one of several co-sharers—Maintainability—Refusal of others to join—Remedy.*

A suit under S 44 of the Tenancy Act can only be brought by the landholder and the landholder is the entire co parcenary body. So one or more of the co sharers only cannot bring a suit under S. 44 If a plaintiff cannot induce his co-sharers to join in the suit, then his remedy lies by way of partition under the Land Revenue Act. (*Darling, S. M. and Mehta, J.M.*) PARBHOO *v* CHATAR SEN. 1938 A.W R. (B R) 321=1938 R.D. 789=1938 A L J. (Supp) 110.

——Ss. 44 and 99—*Suit by tenant to eject trespasser—Limitation—Starting point.*

...ere a tenant sues to eject a person as a trespasser, ...or such a suit begins to run only from the time the ...t is ousted from possession either by the zamindar ... trespasser claiming under the zamindar The mere giving of a receipt for rent to the trespasser by the zamindar after the filing of the suit could not amount to an overt act to oust the tenant from possession. (*Bomford, J. M.*) BHAGIRATH TEWARI *v.* ATIRAJI. 1938 A.L J. (Supp) 77=1938 R D 778.

——S. 44—*Tenant admitted by some only of the coparcenary body—If only a trespasser.*

Where a person has not been admitted to tenancy by ...

——S. 44—*Tenant ousted by some of landholders—Rights to sue them as trespassers*

Where some of a body of landholders have ousted the tenant, in pursuance of some supposed right, the tenant has the right to sue them for ejectment under S. 44 as trespassers. (*Darling, S.M.*) DULAR SINGH *v.* GAJRAJ SINGH. 1937 R D 449.

——S 44—*Tenant persisting in holding after formal ejectment—Zamindar's right to eject when estate is under attachment by Collector—U. P. Land Revenue Act, S.* 151

If a tenant persists in holding on to the tenancy even after a formal ejectment in a proceeding under S. 79 of the Tenancy Act, the Zamindar is entitled to bring another suit for his ejectment as trespasser under S. 44 of the Act, although the Collector has attached his estate for default in paying the land revenue. (*Darling, S. M.*) PAHLAD SINGH *v* SETH BANSIDHAR. 1937 R D. 581.

——Ss 44 and 205—Theka—*Collaterals of* thekadar *in possession—Expiry of* theka — *Liability of the* ... have been put in ... of the *theka* they can ... be ejected as trespassers (*Darling, S M. and Marsh, J.M.*) MASUDA BIBI *v.* AZIMULLAH. 1938 R D. 621=1938 A W R (B R) 268=1938 A L J. (Supp.) 102.

——S. 44—"*Trespasser*"—*Mortgagee from tenant holding after termination of tenancy—Status of—Mortgage over 60 years old—Effect of.*

A mortgagee from a tenant whose tenancy has expired ... a trespasser and can be ... such. The fact that the ...ld makes no difference. ...*rd, J M.*) BALGOVIND *v.* ... 1938 R D 174=...=1938 A W.R. (B R.) 93.

... *mortgage of* khudkasht *plot under old Act—Mortgagor simultaneously executing deed of relinquishment of exproprietary right—Effect—Mortgagor losing cultivating possession of plot—Right of his sons to revive exproprietary rights—Liability to ejectment.*

Where while the old Tenancy Act of 1901 was in force a person executed a usufructuary mortgage of his *khudkasht* plot and simultaneously on the same day executed a deed of relinquishment of all exproprietary rights, the surrender of exproprietary rights was null

AGRA TENANCY ACT (1926), S. 44.

and void having been made before their accrual. If the mortgagor, in whose favour exproprietary rights might have accrued, lost cultivating possession of the plot, his sons who subsequently come to be recorded as holding *tila tasfa* cannot revive these exproprietary rights and are liable to be ejected as trespassers. (*Darling, S. M. and Bemford, J. M.*) BILASI SINGH v. RAM CHANDER SINGH. 1937 R.D. 462.

has been held to mean the whole coparcenary body. So a suit by some only of the members is not maintainable. (*Darling, S. M. and Bemford, J. M.*) MEWA RAM v. SUKHEY SINGH. 1938 A.W.R. (B R) 137= 1938 R D. 267.

——S 45—Fixation of rent—Procedure—If can be done in a suit under S. 132. *See* AGR… SS. 132 AND 45. 1938 A.W…

——S. 47—*Agreement to pay …compromise in ejectment suit—Absence … Acted upon—Binding nature—Onus.*

Where an ejectment suit is dismissed … promise under which the tenant agree… rent in return for the granting of occupancy rights, such a compromise though unregistered, will become binding on the parties, if it has been acted upon. Hence it is the duty of the zamindar who bases his cause of action on such a compromise, to prove that the agreement was in fact acted upon (*Darling S M and Bomford, J M.*) RANGAI CHAMAR v JOGI SINGH 1938 A W.R. (B R.) 153=1938 R D 303

——S 47—Scope—Rent suit—Compromise varying cash rent into *batai rent*—Rate of commutation not …

…1938 R D 169.

——S. 72—*Covenant overriding provisions of—Validity.*

It is not the intention of the Legislature … covenant in a lease to override the provisi… of the Tenancy Act Hence any coven… remission of rent in the kabuliyat is voi… *Nath, J.*) MAHARAJAH OF BENARES v. R… 1938 A W R (H C) 293= 1938 R.D 550=1938 A L J 464.

——S 73—*Remission in contravention of—Zamindar's remedy.*

Where the remissions of rent are in violation of the provisions of S 73 of the Agra Tenancy Act, … dar is entitled to treat them as *ultra vires* … straight away to realise the rents by suits …

10 R A 588=1938 R D 274= 1938 A.W.R. 126 (H C)=1938 A L R 288= A.I R 1938 All 158

——Ss 73 and 74—*Remission of rent under S 73—Conditions to be observed—Non compliance with—Validity of remissions—Suit regarding—If barred by S. 74.*

AGRA TENANCY ACT (1926), S. 80.

According to S. 73 of the Agra Tenancy Act, the remission or suspension of revenue is to precede the suspension or remission of rent and further the proportion of the rent remitted or suspended must not be in excess of the proportion of the revenue remitted or suspended. Where these two requisites are not complied with the remission is not one under S. 73, though it might purport to be one under S. 73 of the Act, S. 74 of the Act … suit in respect of such a … *al Ahmad, JJ.*) ABDUL … F STATE … 38 All 114=174 I C. 505= … R A 588=1938 R D 274= 1938 A.W.R. 126 (H C.)=1938 A L R 288= A I R 1938 All. 158.

——S 74—Bar of suit under—Remission contravening provisions of S. 73. *See* AGRA TENANCY ACT, SS. 73 AND 74 1938 A W R 126 (H.C).

——S 78 (1)—*Claim for compensation made after* …

…not put …ed at a …sed will … made …enancy … PHUL …KUNWAR … R D 380 (2).

——S 79—*Decree against ex proprietary tenant for arrears of rent—Ejectment in execution—Extinguishment of all ex proprietary rights.*

Where in pursuance of a decree for rent against an ex-proprietary tenant, an order in ejectment is passed in execution, all the ex proprietary rights of the tenant are …

(2) *and* (5).

An order for ejectment in respect of an unsatisfied decree for rent …

v QAMAR UL-HASSAN KHAN 1938 R D 787.

——S 80—*Decree for arrears of rent—Judgment-debtor paying small portion of amount within the period of grace and asking for further grace—Discretion of Court—Interference*

… …rtion … rent … for … rt to … the for a further extension … Board will not interfere … SURJA v PANNA 1937 R D. 374.

——S. 80—*Ejectment—Payment of decree amount alone—Costs of ejectment, not paid—Liability to ejectment*

A tenant is not liable to ejectment if he pays the decree amount alone without the costs of the ejectment proceedings (*Bomford, J M*) NEWAL DUBE v. BHOLANATH 1938 R D 395 (2) 1938 A W R. (B R)

——S 80—*Extension of time—Scope of—Tenant, if* ... *Order for ejectment on*

... lay ... be ...

1938 A W.R. (B.R) 152=1

——S. 80—*Judgment-debtor failing to* ... *day allowed for payment—Order of eject* ... *Court to pass.*

If judgment-debtors fail to appear on the last day ...

——S 80—*Notice under—Some of the co tenants contesting—Presumption of knowledge as regards others.*

When some of the co-tenants have appeared and ...

1938 A.W R. (B.R.) 279.

——S. 80—*Order of ejectment passed on judgment debtor failing to appear on day fixed for payment—Judgment debtor applying to set aside order on next day alleging illness—Order setting aside ejectment order—Revision.*

Where a judgment-debtor against whom a decree for arrears of rent was passed failed to appear on the last day fixed for payment and an order of ejectment was passed and on the very next day he applied for that ...

——S. 80 (2)—*Order under—Time for* ... *out, if any.*

J.M.) SHEO PRASAD GUPTA *v.* MANDIL SINGH.

1938 R D. 541 = 1938 A.W.R. (B R.) 235.

——S. 81—*Services of notice under—Extensions of time—Default in payment—Order of ejectment—Review.*

Where on service of a notice under S. 81 of the Ten- ... and obtains extensions of ... payment of the arrears, but ... the expiry of the extended ... it is passed, his application ... ler of ejectment should not ... *J.M* and *Bomford, J.M*)

lord—Suit to eject under S. 44—Maintainability. *See* AGRA TENANCY ACT, SS 44 AND 82.

1937 A.W.R. 888.

... *rtgage by one of several —Effect of.*

... Act is not inapplicable ... executed by one of ... To hold that the sec- ... ase would result in a number of co tenants whittling away the tenancy by small mortgages with which the zamindar would be helpless to interfere. The co tenants must assert them- ... one co-tenant exe- ...

——S. 82—Decision in suit for arrears of rent *inter partes* under the Agra Tenancy Act of 1901 holding that defendant was a proprietor and not tenant does not operate as *Res judicata* in a subsequent suit for ejectment under S. 82 of Act III of 1936.

1937 A.W R. 1215 = 1937 A.L J. 1339.

——S 82—*Illegal sub letting—Co tenants not objecting to each other's sub-letting—Effect—Liability to* ...

DAMRU LAL.

1938 A.W.R. (B R) 149 = 1938 R D. 290.

——Ss 82 and 83—*Illegal sub-letting—Ejectment—Discretion.*

Where there has been illegal sub-letting in favour of the members of the family, which is a typical agricul- ... exercise ... eject the ... *Darling,* ... *v.* RAM ... R.) 325 =

1938 R D. 674.

... 82 and 83—*Mortgage of occupancy holding —Zamindar not taking action to eject mort-* ... *subsequent sub letting of holding by mortgagee to* ... *and others—Zamindar's right to sue for*

AGRA TENANCY ACT (1926), S. 82.

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PHEKU CHA
——S. 82
to suit under
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——S 86—*Applicability—Tenant of Zamindar's grove—Ejectment—Forum*
In the case of a tenant paying *sayar*, and not rent in respect of a grove, he can be ejected only by a Civil

v GHANA RAM 1938 A W.R. (B R.) 150 = 1938 R D 292
——S 86—*Ejectment—Person in possession paying sayar—If can be ejected—Appeal—New point of law*
It is clear that a zamindar cannot under S 86 of the

RAM DAS 1938 A.W R. (B R.) 86 = 1938 R D 252.
——S 86—*Ejectment of sub-tenant—Failure to establish sub-tenancy—Effect.*

and son respectively on same day—Nature of the tra saction—Ejectment, if can be had
Where a simple mortgage in favour of the mother a thekadar is executed on the same date as that

AGRA TENANCY ACT (1926), S. 86.

qabza in the *kha*
the plots as his
dants appeared in
1 F as cultivating
re was a marginal
under the order of
of the occupancy
edure under S 107

All the co sharers in *Sir* should join in a suit under S 86 of the Agra Tenancy Act to eject a sub tenant in *Sir* in whose favour one of the co sharers has executed a mortgage. (*Darling, S. M and Bomford, J. M*)

and the defendant was admitted to a fresh tenancy of the holding and was given land under *Singhara*, in a subsequent suit for his ejectment the defendant cannot revive his claim to occupancy rights which was not recognised in the agreement which led to the decision of the earlier

——Ss 86 and 92—*Suit to eject as heirs of statutory tenant—Father treated as non occupancy tenant—Suit, if maintainable—Fresh suit to eject, if lies*

MOHAMMAD YAR KHAN.
1938 A.W.R. (B R.) 249=1938 R D. 547.

——S 86—*Suit for ejectment of sub-tenant—Denial of sub tenancy by person holding land for over 32 years*

——S 86—*Suit to eject sub tenant—Plaintiff declared occupancy tenant at concessional rate—Sub tenants of long standing at concessional rate—If can resist ejectment.*

Where a person was declared to be an occupancy tenant at the time of the revision of records and rent

NANDAN SINGH *v.* RAJA BRIJEND
1938 A.W.R (B R.) 361=

——**S. 86**—*Suit to eject tenant*
Question if grove was planted by Za... Burden of proof.

Where in a suit under Ss 86 and 92, Agra Tenancy Act, for the ejectment of the defendants as non-occupancy tenants from certain plots which are claimed by the plaintiff Zamindar to be his grove land, it is esta

ceedings Act, if apply to. *See* U P. STA DINGS ACT

——Ss 86 92—Suit under—Dismissa Fresh suit under S. 44—If barred. *See* A ACT, SS. 44, 86 AND 92. **1938 R D 67= 1938 A.W R. 29 (B R).**

——**Ss. 86 and 92**—*Zamindar seeking to eject occupancy tenants under S. 79—Decretal sum paid by one of them raising money on mortgage—Death of mortgagor tenant—Surviving tenants—If can eject mortgagees as sub tenants*

The Revenue Courts will not help an occupancy

an usufructuary mortgage, on the death of the mortgagor tenant the surviving occupancy tenants cannot eject the mortgagees as sub-tenants under Ss 86 and 92 of the Tenancy Act. (*Darling, S. M and Bomford J. M*) NAROTTAM *v.* SHIAM LAL. **1937 R D. 342**

——**S 95**—Consent of landlord—Proof—Oral evidence—Admissibility. *See* AGRA TENANCY ACT, SS 44 AND 95. **1938 A.W.R (B R) 206**

——**S. 95**—*Object of—Ejected tenant holding over—Liabilities of*

Where a tenant after an order for his ejectment, holds on and retains possession of the holding, he there-

by renders himself liable not only to criminal prosecution but also to a suit under S 44 of the Tenancy Act. It is not open to such a person to take any technical point to prove re-admission for S. 95 was introduced in the

rent—If sufficient.

acceptance of rent by the zamindar is not vidence of a contract of tenancy. According the Tenancy Act the re admission of an ejected tenant should be in writing (*Darling, S M. and Mehta, J.M*) RADHEY MOHAN LAL *v* RICHHPAL SINGH **1938 A W R (B R.) 320= 1938 R D 788.**

——**Ss 97 and 98**—*Ejectment—Sowing done prior to—Ejected tenant, if entitled to value of crop at harvest.*

facie entitled to be paid ch he has sown just landlord to take all ng and harvest. In

1938 A.W.R (B R.) 230=1938 A L J. (Supp) 44.

——**S 99**—*Applicability—Conditions—Act of 1901, S. 79—Relative scope—Rulings under—If proper guides in applying S. 99.*

Under S. 99 of the Agra Tenancy Act of 1926, if a obtaining herwise of the urt. It on that land- der in rulings relied Act. (*Ganga* 8 R D 106= L J 1249= 1938 All 65.

——**Ss. 99 and 121**—*Applicability— Hindu joint family having fixed rate tenancy—Suit by one member to set aside alienation of fixed rate tenancy by another member and for declaration that it is not binding on family—Jurisdiction of Civil Court—If excluded.*

A suit by a member of a joint Hindu family seeking to set aside an alienation of family property made by

rare occurrence in a Revenue Court. The fact that the property alienated which is the subject matter of the suit is a fixed rate tenancy, which is both heritable and transferable does not exclude the jurisdiction of the Civil Court which is otherwise the proper Court to decide the question arising in such a case The fixed rate tenancy belongs to the entire joint family of which the plaintiff is a member, and it is the family and not the plaintiff that is the tenant thereof Ss 99 and 121 of the Agra Tenancy Act are wholly inapplicable to such a suit, as the plaintiff and the alienating members are not co tenants in the strict sense of the term but they

are members of a coparcenary body to whom the fixed-rate tenancy belongs. There is consequently nothing in those sections read with S. 230 and Sch. IV of the Act to exclude the jurisdiction of the Civil Court. (*Niamatullah and Harries, JJ.*) DEOKINANDAN PANDEY *v.* RAM CHANDRA TEWARI. I.L.R. (1938 A 40= 173 I.C. 180=10 R A 470=1938 A L R 10 1937 A.L J 905=1937 A W.R. 91 1937 R.D 551=A.I.R 1938 All.

——S 99—Applicability—Suit under S 44—Zan dar supporting defendant's plea of surrender and admission—If converts suit into one under S. 99. AGRA TENANCY ACT, SS. 44 AND 99.

——S. 99—Applicability—Tenant but resiling and not paying process Landlord ejecting sub tenant on basi Suit by tenant under S. 99—Competer TENANCY ACT, SS. 32 AND 99. 1937 A W.R 1205

——S. 99—Appropriateness of proceedings under. *See* AGRA TENANCY ACT, SS 37 AND 99 1938 A.W.R 45 (B.R).

——S 99—*Dispossession, wrongful* ... —*Right to—Considerations.*

Where a tenant is found to be illegal he cannot be denied compensation on that no crop was uptorned. The land pared by ploughings and weeding for ... season Hence if a tenant is prevented from 'cultivating' the area, compensation for loss is called for. (*Darling S. M. and Mehta, J. M*) KASHI SAHU *v* SEKHRAJ SINGH. 1938 R D 882

——Ss 99 and 82—*Ejectment—Remedy—Suit by ejected tenant under S 99, after rejection of review of order of ejectment—If maintainable*

Whether or not a tenant who has been ejected under S. 82 of the Agra Tenancy Act has a right in certain special circumstances to bring a suit under S. 99 he cannot certainly be allowed to do so where he has tried one remedy after another. An order rejecting an application for review of the order of ejectment when not appealed against should be treated as final. (*Darling, S. M and Bomford, J M*) VIVEK SINGH MAJITHIA *v.* RAM LAL 1938 A W R (B R) 303= 1938 A.L J. (Supp) 119=1938 R D 436.

——S 99—Remedy under—When can be availed of *See* AGRA TENANCY ACT, SS 44 AND 99. 1938 R D 248

——S. 99—*Right of suit—Conditions to be complied with.*

If a tenant pleads that he has been a fraudulent abuse of legal process, h come under S. 99 of the Tenancy Act, not availed himself of the other remedi by way of review and appeal In defa ... finding that the decree holders were guilty of fraud the suit was not maintainable (*Darling, S.M and Bomford, J M*) SHEO PRASAD GUPTA *v* MANDIL SINGH. 1938 A.W R (B R.) 235=1938 R D 541

——S 99—*Right of suit under—Ejectment for arrears of rent—Proof of fraud—Effect*

Where in a suit for ejectment for arrears of rent, there has been fraud and a tenant has thereby been ejected the ejectment is not in accordance with the ...

1938 R D. 469

——S 99—*Scope—Retrospective operation—Cause of action arising before Act.*

S. 99 of the Agra Tenancy Act has no retrospective effect and does not oust the jurisdiction of the Civil Court in respect of a suit the cause of action for which arose prior to the coming into force of the Act. (*Ganga* ...

... Zamindar for wrongful ... the Agra Tenancy Act claiming in his plaint that he was a member of a joint family with the deceased statutory tenant but the Assistant Collector found in his favour on the ground that he was heir to the deceased tenant as being his nearest collateral who had co-shared in cultivation with him at his death, the decision operates as *res judicata* on the ...

——S 99—Suit under—Time spent in futile application for review—Benefit of S 14 of Limitation Act if available. *See* LIMITATION ACT, S 14—BENEFIT OF. 1938 R D 469.

——S 99 Proviso—*Applicability—Order for ejectment in execution of rent decree—No actual ejectment—Subsequent lease to another—Suit by original tenant under S. 99—Reliefs to which parties are entitled*

In execution of a decree for arrears of rent, an order for ejectment was obtained. But the Zamindar did not apply for actual ejectment He nevertheless leased the property to a different person. The original tenant thereupon filed a suit under S. 99 of the Agra Tenancy Act. It was held that he was entitled only to damages and at the same time was liable to ejectment under the Act in the year 'in which the suit was brought' and that the proviso to S 99 applied (*Darling, S M and Bomford, J M*) BABU LAL *v* PAL 1938 A.L J (Supp) 1=1938 A W R 33 (B R)= 1938 R D 310.

——S 99 (1)—'*Claiming through the landholder*' —*Meaning*

... w of a ... land- ... enancy ... a suit ... AR *v.* ... (B R).

——S 107—*Belated application—Inference.*

A zamindar who makes an application under S 107 of the Tenancy Act, a year after he has taken possession, is invoking the aid of the Court under false pretences. Such an application is not intended to legalize *ex post facto* a trespass already committed (*Bomford, J M.*) BHAGWATI PRASAD *v* SUNDAR KOERI 1938 A W R (B R) 225=1938 R D 359

——S 107—*Scope—Abandonment by tenant-in-chief —Claim by sub-tenant to be tenant in-chief—Burden of proof—Zamindar's right of ejectment—Delay in suing —Effect of.*

In the case of a holding which is abandoned by occupancy tenant, the person put in possession

AGRA TENANCY ACT (1926), S. 107.

former tenant-in chief cannot claim himself to be the

proves that the zamindar has recognised him as such. The burden is of course on the sub tenant claiming to be tenant-in chief, but when the zamindar delays taking actions for many years, the standard of
of the tenant must be lowered. (*Bo*
NARSINGH TEWARI *v.* KESHO RAI
1938 A.W.R. (B.R.) 101=

——**S. 107**—*Tahsildar's duty before passing an order under.*

Before passing an order under S. 107 of the Agra Tenancy Act, a Tahsildar should be really satisfied that the tenant has abandoned. (*Bomford, J.M.*) BHAGWATI PRASAD *v.* SUNDAR KOERI
1938 A.W.R. (B.R.) 225=1938 R.D. 359.

——**S. 107 (1)**—*Abandonment—Tenant disappearing—No arrangement made for payment of rent—Zamindar's right*

Where a tenant has abandoned and left the village without making any arrangements at all for the payment of rent to the zamindar, the case comes under Sub Cl. (1) of S 107 of the Tenancy Act and
straightaway give a lease of the ho
(*Bomford, J.M.*) RAGHURAJ SI
SINGH. **1938 A.W.R. (B.R.) 145=1938 R.D. 280.**

——**S 107 (1)**—*Abandonment — Tenant quitting holding*

have clearly abandoned his holding as explained in S. 107 (1) of the Tenancy Act and as such the zamindar is

mission—Remedy of ejected tenant

With the formal ejectment of a tenant in proceedings under S. 79 of the Tenancy Act, his tenancy is completely concluded. Th
the decree holder to
the tenant remains in
carries on negotiations
cannot on the failure
S. 121 of the Act for a declaration, for, being no longer

ner challenging alienation by another coparcener—Property alienated consisting of fixed rate tenancy—Jurisdiction of Civil Court. *See* AGRA TENANCY ACT, Ss. 99 AND 121. **1937 A.W.R. 919= A.I.R. 1938 All. 17.**

AGRA TENANCY ACT (1926), S. 123.

——**Ss. 121-123**—Applicability—Tenant of grove

——**S. 121**—*Declaratory suit—Absentee tenant claiming share in tenancy—Disentitling circumstances.*

Where a tenant who has been absent for a long time,
titled to a
where it is
the joint
the defendants have perfected their rights by adverse possession for the required period. (*Darling, S.M. and Bomford, J.M.*) GANGA PANDE *v.* SHEONET PANDE.
1938 A.W.R. (B.R.) 257=1938 A.L.J. (Supp.) 50= 1938 R.D. 539.

——**Ss. 121 and 123**—*Grove holder, if can get a declaration under.*

A grove holder is one of those persons who could get a declaration in his favour under Ss. 121 and 123 of the Agra Tenancy Act. (*Darling, S.M. and Mehta, J.M.*) BINDHACHAL RAI *v.* MOTI RANI.
1938 A.W.R. (B.R.) 282 (2)=1938 A.L.J. (Supp.) 91 1938 R.D. 627.

——**S 121**—Necessity of suit under—Possibility of
CY ACT, SS
45 (B.R.)
or decision under S. 42 of U. P. Land Revenue Act against the landlord. *See* U. P. LAND REVENUE ACT, S. 42.
1938 R.D. 837.

ding occupancy tenant—
ithout reference to occu-
removed from khatauni
as to loss of occupancy rights

Where a widow of an occupancy tenant, whose name

1938 A.L.J. (Supp.) 16=1938 R.D. 280= **1938 A.W.R. 40 (B.R.).**

——**Ss 123 and 44**—*Plaintiff not in possession—*

possession cannot sue under
Act. It is his duty to sue
ectment of the defendants.
nford, J.M.) MAHANGOO GOND *v.* SHEO NATH GOND.
340=1938 R.D. 474.

n under—Fixed rate of 'adam wasul' —

of a fixed rate tenancy including an amount
ble must be the rent recorded as such by the Settlement Officer and the mere fact that for some reason part was not being realized at the time of settlement will not make the whole amount any the less payable. *Adam wasul* means 'not realized' and not 'not realizable'. (*Darling, S.M. and Bomford*

v. NOOR MOHAMMAD. 1938 A.W.R. (B R) 358= 1938 R.D 746.

——S. 123 (c)—*Enquiry—Scope—Duty of Court—Parties both agreeing that rent was fixed—Difference as to amount—Power of Court to hold no rent fixed—Procedure.*

Where both parties to an application under
of the Agra Tenancy Act agree in saying that
has been definitely fixed, but they differ as to
amount at which it was fixed, it is not ope
Court to hold that no rent has been fixed at
Court is bound to decide only as to what was the rent fixed (*Darling, S M. and Bomford, J. M.*) RAM SAJAWAN v GANESH PRASAD 1938 R D 96= 1938 A.W.R. 51 (B R).

——S. 123 (c)—*New plea—Application for declaration of rent—Denial of relationship of landlord and tenant—When to be raised—Plea in appeal—If open.*

In an application for declaration of the amount of rent, the tenant-defendant denying the relationship of landlord and tenant must specifically plead it in his written statement, and must see that an issue is fixed on the point. He cannot be allowed to take the point for

In a suit by a Zamindar under S 123 (c) of the Tenancy Act for a declaration of the rent payable by his statutory tenant, the burden of proving, in the absence of a lease,
khataunt he
(*Darling S*
MOHOBBE A
——Ss 1:
of grain ren
—Claim to i
"Siwai",
collected at c
about three years and then sues for arrears of his grain rent under a provision of law which is primarily intended for the recovery of cash rent should not be allowed to charge interest at 25 per cent.
should not allow him more th
allowed on cash rent arrears.

224 AND 132. 1938 R D 565

——S. 132—*Appraisement—Landlord resorting to remedy under S. 132—Duty as to proof.*

Where a landholder resorts to S. 132 for relief, of the than to the procedure prescribed by Ss. 137 to 139 rather Tenancy Act, he cannot expect the Courts to

nue Act, nor does it come under S 86. But that *Nadhwana*, must be included in 'Sayar' is clear from the definition of 'Sayar' which includes irrigation charges. Dues which come under the definition of 'Sayar' can be sued for under S. 132 of the Agra Tenancy Act provided they are 'payable', and they are entirely different from

co-sharer—Demarcation of ex proprietary tenancy and fixation of rent—Right of vendee to sue for arrears of exproprietary rent, independently of other co-sharers—Agency, if can be implied.

Per *Darling, J M.*—Where in Khata khewat forming a part of a divided mahal the co-sharers are in possession of their respective shares in the shape of Sir and Khudkasht, and on a sale by one of the co sharers of his proprietary rights though the vendee gets the ex-proprietary tenancy demarcated and rent fixed, yet he cannot sue alone for the arrears of this rent, as the tenant is the tenant of the whole coparcenary body.

1938 R D 806.

——S. 132—*Scope—Suit under S. 123 (c) for arrears of rent—Rent shown in papers as Rs 12 plus*

plaintiff did not take the order in revision.

Held, that the order should stand as final for the purposes of a rent suit until and unless the Zamindar

1938 A W R 49 (B.R.).

132 and 265 (1)—*Shamilat patti—Right* *ent—Co sharers, if can sue separately for* *rent—'Usage', what may not amount to*

Per *Darling, S.M*—In the case of a shamilat patti, a lambardar is entitled to collect the rents, in the absence of any usage or contract to the contrary As such, a co sharer of a solitary statutory holding in the shamilat patti, cannot sue alone for arrears of rent in respect of it. The fact that a particular co-sharer used to

a usage
cy Act.
'e of the
term usage used in S 205 (1) is that it is a usage to the contrary to what takes place normally, that is, a lambardar collects rent but a usage may be set up by which, it is not the lambardar who collects rent but somebody else, or by usage, it is not all co-sharers who collect rent, but somebody appointed by
Where a course of practice has ripenec
which has been embodied as a result of
tion of the co sharers into an entry in t
it ought to be respected and individual
ed to sue separately for arrears of rent. (*Darling, S. M. anc*
SINGH

R. 2.

by defe
Whe
Tenancy Act, the defendant admits the claim in part,

——Ss 132 and 45—*Suit for arrea competent, when rent not settled—Prope*
A suit for arrears of rent could only
the rent was fixed from before. So it is
for a Court to fix rent in a suit for arrea
is unsettled, the proper course is for a
it fixed by a suit under S 45 of the Te
then sue for arrears under S. 132. (*Mi*

——Ss 132(2) and 216—*Land occupied by tenants—Lessee of tenants' rights—Position of—S. 132 (2) if can be used against such a person*
Though a proprietor can give as many leases as he likes, he cannot superimpose a tenant over existing tenants. Where land is already occupied to a great

that S 132 (2) cannot be used as against a thekadar for recovery of arrears of rent in respect of such a lease. (*Darling, S M. and Bomford, J.M.*) RAM NATH SINGH *v.* SECRETARY OF STATE. **1938 R D. 796.**

——Ss. 132 (2) and 252—*Order by Collector on*

respect of any order that may be passed therein. (*Darling, S.M. and Bomford, J.M*) RAM NATH SINGH *v* SECRETARY OF STATE. **1938 R. D 796.**

——Ss 175 and 179—*Suits under—Claims for compensation—Distinction—Separate suits—Necessity.*
While compensation can be claimed either under S. 175 or S. 179 of the Agra Tenancy Act, the difference between the two is that compensation will be given under S. 175 if there were no arrears at all, while it will be given under S. 179 if there has been irregularity in procedure. Suits under S. 175 and S. 179 are really distinct with distinct causes of action and separate periods of limitation. An aggrieved party desirous of

coming under S. 176 or Ss. 178 and 179, has to file separate suits. (*Darling, S. M. and Bomford, J. M.*) BABAR SINGH *v.* RUP SINGH. **1938 A.W.R. 34 (B R.)=1938 R.D. 311.**

——S. 184—*Rent-free grant—What amounts to—Mere non collection of rent—Effect.*
S. 184 of the Aga Tenancy Act lays down that land held rent-free in respect of which no liability to rent is

a rent free grant. (*Darling, S.M. and Bomford, J.M.*)

——Ss. 187 and 186 (1) (c)—*Grant held for over 50 years, but not by two successors to the original grantee—Position of grantee — Sub tenants from — ability to ejectment.*

—Ss. 187 and 188—Muafi khidmati grant—
re and incidents of—Grantee of—Person holding
—Status of—If sub tenant. *See* AGRA TENANCY ACT, S 3 (7). **1938 R D 160= 1938 A W.R. (B R) 91.**

——Ss. 196 and 197 — *Applicability — Occupancy holding—Plot planted with trees—Sale in execution—Purchaser—Right of—Surrender of holding by tenant to landlord—Purchaser's right to be recorded as grove-holder.*

in execution of a decree of a Civil Court a
ind comprised in the holding of an occupancy
tenant with trees thereon—the number of trees being such as maken the plot a grove—if sold, the purchaser who gets possession of the plot through the Civil Court is entitled to be recorded as grove holder of that plot under Ss. 196 and 197 of the Agra Tenancy Act, when the occupancy tenant surrenders the holding to his land
the implied
changes the
be mortgag-
ght to use the
er of grove
(*Darling, S M. and Bomford J.M.*) SARDHA DIN *v.* MASURIA DIN. **1938 R D 147= 1938 A W R 80 (B R.).**

——Ss 196 and 197—*Mahanth allowing persons to plant groves—Right to eject—Limits.*
Where a Mahanth allows persons to plant groves, they become grove holders and are not trespassers. Grove-holders as long as they look after their trees and pay their rent regularly cannot be ejected as trespassers. (*Marsh, J M.*) GORAKH NATHJI *v.* SWAMI NATH LAL. **1938 A W.R (B R) 315=1938 R.D 623.**

——Ss 196 and 197 (h)—*Scope of—Planting of grove by occupancy tenant with permission of land-*

AGRA TENANCY ACT (1926), S. 196.

holder—Removal of trees—Effect—Liability of grove-holder to ejectment.

An occupancy tenant who plants a grove his occupancy holding with the permission c holder, holds that plot as a groveholder in of all subsisting rights and liabilities under The effect of this is that when the plot cease the character of a grove, the groveholder on his former occupancy rights to protect ejectment as a non-occupancy tenant. (*Darling, S. M. and Bamford, J. M.*) RAM SAHAI *v.* HET SINGH.
1938 A.W R. 1 (B R) = 1938 R D 108.

——S. 196—*Tenant, holding over—Status of—Planting of trees by him—If becomes a grove.*

When once the area was definitely held not to be a

M.) SALIG RAM *v* THAKUR SRI RAM SINGH.
1938 A.W R. (B R) 267 (1) = 1938 R D. 771 = 1938 A L J (Supp.) 89 (2).

——S 197—*Grove ceasing to be such—Status of grove holder—Right to plant new trees.*

If a plot ceases to be a grove, the grove-holder becomes a non occupancy tenant and without written permission is not entitled to plant new trees. (*Drake Brockman, S. M. and Knox, J. M.*) KAILASH BIHARI LAL *v.* MUKTA PRASAD 1937 R.D. 599.

——S. 197—*Groveholder—Right to transfer his interest—Law as to—Custom to the contrary—Onus.*

S. 197 of the Agra Tenancy Act has introduced a

transfer to a groveholder (*Bennet, Iqbal Ahmad, Yorke and Varma, JJ.*) MUBARAK HASAIN *v.* SAGAR MAL. I L R 1938 All 396 = 175 I C 665 = 10 R A 717 = 1938 A L R 473 = 1938 R D 505 = 1938 A.L J.

——S. 197 (a)—
ceasing to exist—Post ejectment.

It is clear from the provision Tenancy Act that the status of a non-occupancy tenant Thus under which a grove holder is presumed to hold as a non occupancy tenant come ceases to exist, even thereaf be that of a non-occupanc liable to ejectment at the The mere non-payment of re status as a non-occupancy tenant whether holding or liable to ejectment at the even though he may have co holding for a period of m expiry of the term of a

——S. 203—*Applicability—Perpetual lease giving heritable rights and powers of transfer—Provision against ejectment under any circumstances—Effect of—Status and rights of lessee—Rights—If saleable in execution*—Thekadar.

A deed of perpetual lease, the terms of which give the lessee the right to receive rents and profits and also full

AGRA TENANCY ACT (1926), S. 221.

1938 A.L R. 45 = 1938 R D 81 = 1937 A W.R. 1043 = 1937 A.L J. 1166 = A I R 1938 All. 35.

——S 213—*Effect of*—Theka—*Surrender by* Thekadar *before expiry of period—Zamindar, if can sue for rent.*

S. 213 of the Agra Tenancy Act authorizes a *Thekadar*

that period, even if the *Thekadar* surrendered his rights. So where there has been a surrender before the expiry of the period fixed a zamindar is entitled to maintain a suit for arrears of rent, even if it be with reference to the period for which the *Theka* was executed. (*Verma, J.*) SURYA PAL SINGH *v* BUNDE ALI KHAN. 1938 A.L J. 93 = 1938 R.D 204 = 1938 A W.R. 74 (H C.).

——S 221—*Profits collected by Lambardar exceeding revenue paid—His right to sue for arrears of revenue.*

If the profits collected by a Lambardar exceed the ntitled ; 221, fford,

370

——S. 221—*Suit for arrears of land revenue by lambardar with rights by purchase—Plea of* malik farotar—*Duty of Court—Decree without enquiring into plea—Propriety of.*

purchase, the defendant pleads *rotar* and declares that the land een payable by the *malik mahal,* whether the defendant is a *malik*

S. 221—*Suit for Lambardari fees—Payment of revenue direct by co-sharer—If negatives right to fees*

Though a co sharer pays his revenue direct into the Thasil nevertheless, the lambardar is entitled to his fees, as he is legally responsible for paying the revenue. (*Darling, S M. and Bomford, J M.*) HARDEI *v* RAM SARUP. 1938 R.D. 127 = 1938 A W.R. 4 (B.R.)

——S 221—*Village expenses—Right to recover—Proof of incurring of expenses—Necessity.*

A claim for village expenses cannot be allowed in the absence of any evidence to show that the Lambardar had incurred any such village expenses. (*Darling, S.M. and Bomford, J.M*) HARDEI *v.* RAM SARUP.

1938 R.D. 127 = 1938 A.W.R. 4 (B R).

——S 223—*Suit by assignee of revenue—If can be brought against lambardar alone.*

A suit under S. 223 of the Tenancy Act by the assignee of revenue should be brought against all the

sub-proprietor for rent—Suit filed under S. 132, if can be converted into one under S. 224.

The remedy of a plaintiff muafidar for recovery of the rent due from the *Sirdars* who are sub-proprietors under S 4 (16) of the Tenancy Act, lies by way of suit under S 224 and not S. 132 of the Act. Such suits are triable only by an Assistant Collector of 1st class. Consequently, where the suits are lodged under S. 132 in the

dues—Forum—Civil or Revenue Court.

Where by an order of the Settlement officer a certain percentage of the assets was fixed as malikana payable to a superior proprietor by an inferior proprietor, it represents the former's share of the
tenants to the landholder and so t
words 'rent due to him as such' in
Tenancy Act S 230 of the Agr
comes applicable to such a suit and
respect of a malikana would not

operate as res judicata.

It cannot be held that a decision as to the rate of profits operates as a *res judicata*, for circumstances governing the rate of profits differ from year to year. (*Darling, S. M. and Bomford, J. M.*) SHIVA BANS PANDEY *v.* RAJMAN PANDEY.

1938 A.L J. (Supp) 84 = 1938 A.W.R. (B.R) 300 = 1938 R.D 441.

——S 227—*Co-sharers—Realisation of rent—Method—Excess realisation by one—Remedy of others—Suit for profits*

Every co sharer in a joint mahal is entitled to realize

profits according to the Jamabandi. In a suit for

satisfaction of the claim of such co sharers who may not

have realized t
those tenants.
v. MAN SINGH

——S. 227—*Co-sharers—Suit by one for profits—Mortgagee of specific plots from one co sharer—Decree against—If can be passed.*

Where a co-sharer mortgages specific plots of which he is in exclusive possession, the Court in a suit for pro-
sharer should regard the
s mortgagee as a single
sed under S. 227 of the
mortgagee from the co-
SHEOMURAT SINGH *v.* BIP NARAIN SINGH 174 I.C. 60 = 10 R A 585 = 1938 R D. 139 = 1938 A L R 228 = 1937 A L J. 1354 = 1938 A W.R. 19 (H C.) = A.I.R. 1938 All. 108.

——S. 227—Gonwandhar—*Right to sue for share of profits of* mahal.

A *gonwandhar* has no share in a *mahal* as defined in S. 4 (4) of the Land Revenue Act. Therefore, he can-
for a share of the profits of a *mahal* under
f the Tenancy Act. (*Darling, S.M. and J.M.*) RAM LAKHAN SINGH *v.* RAM SINGH. 1937 R D 337.

227—*Lambardar — Suit for settlement of accounts—Competency.*

Every lambardar is a co-sharer first, and the fact that he is a lambardar does not make him any the less a co sharer, and a lambardar is competent to maintain a suit

ng co sharer—Right

When a co sharer sues a collecting co sharer for profits under S. 227 of the Tenancy Act, there is no reason why the sole collecting co sharers should not share with the other co-sharers the profits actually realised. (*Darling, S.M. and Bomford, J.M.*) MADAN *v.* RAM GOPAL. 1938 A.W.R. (B R) 163 = 1938 R D 373.

——S 227—*Suit for profits—Maintainability—Purchaser from co-sharer obtaining decree for proportionate share of ex proprietary rent only—If can sue for profits.*

Where a purchaser from a co sharer obtains a decree,

In a suit under S. 227 of the Agra Tenancy Act, for

miss a suit on that ground. If necessary damages may

be awarded to the other party. (*Darling, S. M. and Mehta, J. M.*) RAM BHAROSE *v.* SUNDAR LAL.
1938 R.D. 826

——S. 230—*Applicability—Suit for return of sum advanced for* zaripeshgi *on repudiation by heir of grantor—Jurisdiction of Civil Court*

A suit by a person for return of the money advanced by him in consideration of a *zaripeshgi* lease, the validity

grantor

tion for

the Civil

the Rev

does not apply to such a case. (*Niamatullah and Allsop, JJ*

——Ss. 230 and 123—*Attachment, under decree for arrears, of crops in different zamindari—Distraint by that zamindar—Civil suit to declare distraint fictitious and that rent paid was on basis of* batai—*If barred by S.* 230.

Where a person who had obtained a decree for arrears of rent, attached certain share of standing crop, in a different zamindari, but the other zamindar distrained the whole crop for his own arrears, a civil suit to declare

——S 230—*Bar under—Suit by a tenant agai his co tenant for profits—Jurisdiction of Court Small Causes to try.*

Where the plaintiffs claim profits in proportion to the share in the holding on the allegation that they were co-tenants with the defendants, of certain land which was exclusively in the cultivation of the defendants, the suit is exclusively cognizable by Civil Court. The bar provided by S. 230 of the Agra Tenancy Act will be effective only if the suit is of the nature specified in Sch 4 to the Act The mere fact that the defendants alleged that the plaintiffs were not the tenants of the holding would not oust the jurisdiction of the Civil Court. (*Niamatullah and Ismail, JJ*) DATA RAM *v* DHARA. I.L R. 1938 All 462=176 I C 514=11 R.A. 117=1938 R D 725=1938 A.L R 639=1938 A.W R. (H C) 326=1938 A L J. 519=A.I R. 1938 All 375.

——S. 230—*Jurisdiction of Revenue Courts—Test—*

minors and the lessee is in possession as a tenant, though the perpetual lease may be invalid, the relationship of landlord and tenant is established, and as such any agitation as to the invalidity of the lease cannot be carried on in a Civil Court. (*Bennet, A C J. and Verma, J.*) TAHAD ALI *v.* ISRAR. 1938 A L J. 1110=1938 A.W R (H C) 788=1938 R D 910.

——S. 230—*Relief falling within competence of Revenue Court—Jurisdiction of Civil Court.*

Where a landholder brings a suit that the transferee of a fixed rate tenant has no right to build a house on the ground that it does not constitute improvement, adequate relief can be granted by Revenue Court under Ss. 82 and 120 and hence only Revenue Court has jurisdiction to try the suit. (*Bennet and Verma, JJ.*)

——S 234—*Jurisdiction—Decree for arrears of*
t—Power of Assistant
n decree.
Collector of the second
decree for arrears of rent an agreement to enhance rent. (*Darling, S.M. and Bomford, J.M*) RAM PRASAD *v.* KALI PRASAD. 1938 R D. 99=1938 A.W.R. (B.R) 49.

——S 237—Theka *granted by mortgagor pending foreclosure proceedings—Mortgagee agreeing to* Thekadar *being recorded as such on his undertaking to surrender possession after Civil Court's decree—Mortgagee applying for mutation after decree by Civil Court—Application opposed by* Thekadar—*Mortgagee's*

Held, that the possession of a proprietor was distinct from that of a *thekadar* and all that the mortgagee had been given by the Civil Court was proprietary possession and that if he thought that *X's theka* was really void *ab initio* or had come to an end in accordance with his promise, it was open to him to file a suit to get rid of him, and that a mutation case between proprietors was not the proper forum to decide whether *X's theka* had come to an end or not (*Darling, S M and Bomford, J M*) BHAWANI SHANKAR *v* DULAREY LAL
1937 R D. 391.

——S. 238—*Assistant Collector not empowered under to carry on sales—Proceedings before such officer, if null and void.*

Where an Assistant Collector is not duly empowered under S. 238 of the Agra Tenancy Act with the powers
r for the purpose of carrying out sale of
rty, all the proceedings in his Court, in
a decree for arrears of land revenue, are
and void. (*Darling, S.M and Marsh,*
RAKSHPAL *v.* RAM SARUP.
938 A W R (B R.) 254=1938 R.D. 557.

—Appeal against order under S 144, C.P.
See AGRA TENANCY ACT, Ss 3 AND
1938 A.L J 988.

——S 242—*Applicability—Court of a Small Cause Court Judge.*

A forum such as a Small Cause Court Judge has no jurisdiction at all under the Agra Tenancy Act as an appellate Court. S 242 of that Act only refers to the Court of the District Judge and not to a Court such as the Court of the Small Cause Court Judge.

AGRA TENANCY ACT (1926), S. 242.

and Verma, JJ.) KASHI KAHAR *v.* ASHARFI SINGH. I.L.R 1938 All 754=177 I C 450=11 R A. 199= 1938 A L R 747=1938 A L J 720= 1938 A.W.R (H C) 522=1938 R D. 714= A I R. 1938 All 511.

——**S. 242 (1) (a) and (d)**—*Appeal to District Judge—Essentials*

Though a suit may be one under S. 221 of the Agra Tenancy Act, it is only when the amount of revenue annually payable is in issue that an appeal lies to the District Judge When a person denies his liability to pay the amount claimed, there is no issue about the amount as there is no contention about it. (*Ganga Nath, J*) MOHAMMAD YUSUF ALI KHAN *v.* SHIAM KUNWAR. 174 I C 448=1938 R D 144= 1938 A L R 275=10 R A 576= 1938 A.W R. (H.C.) 24=1938 A L J 3= A I R 1938 All 135.

——**S 242 (3) (a)**—*Scope—Question of proprietary right—Whether lands are* sir *lands or tenancies—Appeal to District Judge—If lies*

A question whether certain lands are the *sir* plots of a person or whether they are ... a question of proprietary ... S 242 (3), Agra Tenancy ... lies to the District Judge ... would lie only to the C... (*Sulaiman, C.J. and Harries, J*) RAM CHANDRA SINGH *v* MISRILAL I L R. 1937 All 958= 172 I C 629=10 R A. 418=1938 A L R 18= 1937 A.W R. 888=1937 R.D 532= 1937 A L J 1204=A I R. 1937 All 790.

——**S. 244**—*Mixed question of law and fact—Second appeal—Question of admission to tenancy.*

The question of admission to tenancy might be interpreted as a mixed question of law and fact and as such on that ground a second appeal might be admitted. (*Darling, S. M. and Mehta, J. M*) NAND LAL *v.* WAJID ALI. 1938 A W.R. (B R) 547= 1938 R D 672

——**S 244**—*Second appeal—Interference—No doubt as to identity of plot—Difference in area owing to mistake in measurement—Court being misled.*

Where there is no doubt about the identity of the plot in question, but the Commissioner was misled by the difference in the area of the plot which was due to a mistake in the measurement, his order can be set aside in second appeal. (*Darling, S. M. and Mehta, J. M.*) MADHAI SAITHWAR *v.* TULSI KEWAT. 1938 A W.R. (B R.) 373=1938 R D 735.

——**S. 248 (3)**—*Execution proceedings governed by O. 21, C. P Code—Order confirming sale—Appeal—* ... 1011-A ... under ... 1, C. P. ...

M. and Bomford, J. M) ASA RAM *v.* PARMA. 1938 A.W R (B R) 158=1938 R D 251.

——**Ss. 248 (3) and 226**—*Order of Collector confirming sale in execution of decree for profits—Appeal—Forum.*

An appeal against an order of Collector confirming a sale in execution of a decree for Rs. 225 passed in a suit for profits under S 226 of the Agra Tenancy Act, lies not to the Commissioner, but to the District Judge under

AGRA TENANCY ACT (1926), S. 252.

Cl. (3) of S. 248 of the Act. (*Darling, S.M. and Bomford, J.M.*) AMIR HASAN *v.* BADRI PRASAD. 1937 R.D. 373 (1).

——**Ss. 248 (3) and 252**—*Stay of execution of decree for ejectment—Appeal, if lies to District Judge—Revision to Board—Competency.*

Where an Assistant Collector stays the execution of a decree of ejectment, the order though one under S. 47, C. P. Code, will not be open to appeal to District Judge by reason of Ss. 248 (3) and 242. Hence it is open to revision by the Board under S. 252. (*Darling, S.M and Mehta, J.M.*) HOLDSWORTH *v.* ZAMINDAR CHAUDHURI. 1938 R D. 801.

——**S. 249**—*Appeal—Order of remand by District Judge—Appealability—Remedy.*

The Agra Tenancy Act does not provide for an appeal from an order of remand, but the order can be questioned by a superior Court when the final decree is appealed from, under S. 105 (1), C. P. Code, which applies to suits and appeals under the Tenancy Act, though S. 105 (2) does not apply, as the Tenancy Act does not allow an appeal from an order of remand. ...

——**Ss. 249 and 3, Cl. (14)**—*Second appeal from order passed under S. 47, C. P. Code, under Tenancy Act—If lies—'Decree' under Tenancy Act—Meaning of.*

The definition of a 'decree' given in S. 2, Cl. (2) of the C. P. Code, does not apply to the Agra Tenancy Act. Under the Agra Tenancy Act, a 'decree' as defined in S. 3, Cl. (14) means any order which so far as the Revenue Court is concerned, finally disposes of a suit. So it does not include the determination of any question within S. 47, C. P. Code. Any order passed under S. 47 is not a decree but remains an order under the Agra Tenancy Act. Hence no second appeal would lie from an order passed under S. 47, C. P. Code, under the Tenancy Act. Where a lower appellate Court assumes jurisdiction in a matter, treating it as one in which a second appeal is allowed by a statute, a second appeal would lie to the High Court and the High Court could then correct the mistake of the lower Court. But it is not so in a case which, as treated by the lower Court, is one in which a second appeal is expressly prohibited by the statute. (*Ganga Nath, J.*) DHARAM SINGH *v.* TIKAM SINGH . 174 I C 481=10 R.A. 686= 1938 A L R. 280=1938 A.L J. 63= 1938 R.D. 149=1938 A W R. (H C.) 53= A.I R 1938 All. 124.

——**S 252**—*Failure to award costs—Revision.*

Failure to award costs has, no doubt, been held to be ... it is undesirable that appli... encouraged in trivial cases ...ke in the case is small. ...ford, J.M.*) MAHBOOB ... 1937 R D 379

...pplication under S. 132 (2) of the Tenancy Act—If revisable. *See* AGRA TENANCY ACT, Ss. 132 (2) AND 252. 1938 R. D. 796.

——**S 252**—*Powers of revision—Improper admission of application under S. 132 (2)—Interference.*

The Board has full powers of revision under S. 252, if the Collector has improperly admitted an application under S 132 (2) of the Act against a Thekadar, notwithstanding the provisions of S. 216 of the same Act.

AGRA TENANCY ACT (1926), S. 252.

(*Darling, S.M and Marsh, J.M.*) SECRETARY OF STATE *v.* RAM NATH SINGH. **1938 R D 798.**

——S. 252—Revision—Competency—Order staying execution of decree for ejectment *See* AGRA TENANCY ACT, Ss. 248 (3) AND 252. **1938 R D 801.**

——**S. 252**—*Revision—Grounds—Absence of hard and fast standard as to what is an illegality or irregu-*

and fast standard
or irregularity as
Collector's finding
record and he had

the Board's interference in revision. (*Darling, S M and Bomford, J M.*) SAHDEO *v.* RAM SARAN **1938 R D 742=1938 A.W.R. (B R) 359 (2)**

——**S. 252 (c)**—*Material irregularity—Assistant Collector giving plaintiff only $3\frac{1}{2}$ weeks to deposit fees for fresh summons—Dismissal of suit on default by plaintiff—Interference in revision—C. P. Code, O. 9, R. 5*

Under R. 5 of O. 9, C. P. Code, a period of three months is allowed to a plaintiff when a summons is returned unserved. Where, therefore, in a suit for profits under S. 226 of the Agra Tenancy Act the Assistant Collector only allows the plaintiff some $3\frac{1}{2}$ weeks within which to furnish a new application and to deposit

——**S 265**—*Admission to tenancy by lambardar after he ceased to have any share in the patti—Validity.*

Where a lambardar had ceased to have any share in

——**S. 265**—*Lambardar—Right to sue for rent—Absence of share in patti—Onus*

The lambardar cannot sue for rents in a patti in which he has no share, but it is for the defendant concerned to prove that his field represents a property in which the lambardar has no share. (*Darling, S. M. and*

AGRA TENANCY ACT (1926), S. 266.

Bomford, J. M) SAHDEO *v* RAM SARAN. **1938 A.W.R. (B R) 359 (2)=1938 R D 742.**

——**S 265**—'Usage'—What may not amount to—Significance of the term. *See* AGRA TENANCY ACT, Ss 132 AND 265. **1938 R D 816.**

——**S 266**—*Co sharers—Suit by one only for arrears of rent—Competency—Plea that suit not maintainable—When to be raised.*

One of several co sharers cannot maintain a suit for arrears of rent. The tenant can plead that the suit by one co sharer only is not maintainable and he can raise this plea at any stage. The mere fact that one of the

in show that he is their
by usage or contract to
' *Bomford, J.M.*) RAJ KUMAR RAI *v* RAM LAKHAN. **1938 A.W R. (B.R) 105=1938 R.D 169.**

——**S 266**—*Joint patti—Ejectment of heir of statutory tenant—Suit by some only of the co-sharers—Maintainability—Burden of proof.*

The landholder is the person entitled to sue for ejectment of an heir of a statutory tenant; and the landholder in the case of a joint undivided patti is either the lambardar or the whole coparcenary body of co-sharers, or that co sharer who is entitled to receive the whole rent of the tenant. In a suit for ejectment of the heir of a statutory tenant by two of the sharers, who do not form the whole coparcenary body and neither of

e plaintiff to
a right to
the absence
n be made.
OSA *v.* BIJAI
R D 163=
(B R) 99
ncy—Power

of one of several co sharers

The granting of a lease of agricultural plots is permitted by the Tenancy Act and every owner of an agricultural plot of land is therefore competent to grant a

1938 A W R (H C) 199=1938 A.L J 333= A I R 1938 All 316.

—S 266—Scope of—Language, if allows agency e implied. *See* AGRA TENANCY ACT, SS. 132 AND **1938 R D 806**

—**S. 266 (2)**—*Applicability and scope—Sale of* *rietary rights along with* mahal—*Undertaking to pay rent of exproprietary holding to vendor—Latter given right to collect whole rent—Undertaking acted upon for 50 years—Usage in mahal for exproprietary tenant to pay whole rent to vendee who accounted to co-sharers—Effect of—Right of vendee to realise entire rent.*

AMENDMENT.

[illegible]

between the submergence and the re-formation the land was wholly lost and absorbed and no part of its surface remained capable of identification in no way militates against the title based upon the re formation. But a title founded on original ownership and identification of [illegible]

A I.R. 1938 Mad. 470.

AMENDMENT. *See* PRACTICE—PLEADINGS

——Of decree. *See* C. P CODE, S. 152.

——Of plaint. *See* C. P. CODE, O. 6.

APPEAL—*Appellate Court—Functions and duties of Court of first appeal—Necessity for determination of all questions of fact*

It is the function and duty of a Court of first appeal to determine all the questions of fact necessary for decision of the issues in the case It might think that on a particular issue the burden of proof is on the plaintiff or on the defendant and its view on that may affect its finding. In that case it would do well to say what view it would take of the disputed question of fact had it placed the burden on the other party. It would then be possible for the Court of first appeal to avoid all the unnecessary harassment to the parties which is involved when in second appeal it is found that there is no ascertained set of facts to which the law can be applied. (*Rowland, J*) RAJPATI NARAYAN SINGH *v* KIRIT NARAYAN SINGH. 173 I C 699=4 B R 299= 10 R P. 424=18 Pat L T 806= 1937 P W N 578=A I.R. 1938 Pat. 71.

——*Appellate Courts—Power—Remand on issues not raised in pleadings—Competency.*

[illegible]

Madan, J) BARAIK RAM GOBIND SINGH *v* CHOWRA URAON. 16 Pat 632=1938 P W N 78= 173 I C. 644=4 B R 315=19 Pat L T. 259= 10 R P. 430=A I R 1938 Pat. 97

——*Competency—Decree—Applic*[illegible] *Rejection—Effect—If supersedes o*[illegible] *tion of accidental slip on review passed under S. 152 or under O*[illegible] *original decree—Maintainability—*[illegible] *superseded.*

[illegible]

made absolute then the third stage is reached. The case is then heard on the merits and may result in a repetition of the former decree or in some variation of it. In either case the whole matter having been reopened, there is a fresh decree. When the Court rejects a review appl[illegible] order is pass[illegible] stage. Ther[illegible] role in the s[illegible] investigation [illegible] character of the order made. When the rule is dis-

APPEAL.

[illegible] stage, there is no fresh decree [illegible] decree, the parties being rele[illegible]g on the old decree. In such a [illegible] original decree is not barred, [illegible]d the appeal cannot be dismissed on the ground that the order dismissing the review application has the legal effect of vacating the decree from which the appeal is filed. Nor can the correcting of an error arising from an accidental slip bring into existence a fresh decree barring the right of appeal from [illegible] Such correction must in truth be [illegible]er passed in exercise of the powers [illegible] S. 152, C. P. Code, though the [illegible]ed the order on a review application, purporting to act under the review provisions of the Code. An amended decree must, in the contemplation of law, be taken as in force from the date of the original decree, as there is a well-founded distinction between a case of amendment and a case of novation or substitution. In the case of the amended decree, an appeal therefrom is perfectly competent. (*Venkatasubba Rao and Abdur Rahman, JJ.*) PAKKIRI MAHOMED ROWTHER *v.* SWAMINATHA MUDALIAR 1938 M.W.N. 250=47 L W. 474= A.I R. 1938 Mad 573=(1938) 1 M.L J. 796.

——*Competency—Preliminary decree in mortgage suit—Appeal—Omission to apply for stay of proceedings—Subsequent final decree—Failure to appeal from—If bar to maintainability of appeal from preliminary decree.*

Pending an appeal from a preliminary decree in a mortgage suit the trial Court made a final decree. The appellant did not ask for a stay of proceedings after he instituted his appeal nor did he file an appeal against the final decree. At the hearing of the appeal a preliminary objection was raised that the appeal was not competent.

[illegible]

to vary or reverse or affect the final decree. [illegible] *and Norman, JJ.*) BASAWANT *v.* KALLAPPA 175 I C 43=10 R B. 615= 40 Bom L R. 164=A I R. 1938 Bom 222.

——*Failure by party to appeal—Party, if debarred* [illegible]

[illegible]

parties against whom relief is sought. There is no reason for distinction in this respect between a Letters Patent appeal or any other appeal. (*Young, C.J. and Monroe, J*) RAMESHWAR DAS *v* OFFICIAL RECEIVER, DELHI. I.L.R. 1938 Lah 398=

[illegible]

can be raised for the first time in appeal.

APPEAL.

——*Parties*—Pro forma *defendant*

Where persons were joined in a suit as *pro forma* defendants as they did not join as plaintiffs and where no issues were framed with respect to their interest and where none of these persons are interested in the result of the litigation, such persc
to the appeal in that suit
JJ) SABITRIBAI *v* JUGA
43 C W N

——*Question of fact—Inference of intention from circumstances.*

Whether a particular intention can be inferred from a particular set of circumstances is rather a question of fact than of law. (*Sir George Lowndes*) BALASUBRAMANYA PANDYA THALAIVAR *v.* SUBBIA TEVAR
65 I A. 93 = I L R 1938 Mad 551 = 1938 A W R (P C) 62 = 66 C L J 581 = 40 Bom L R. 704 = 32 S L R 328 = 1938 A L J 215 = 4 B.R. 251 = 42 C W N 449 = 10 R P C 162 = 19 Pat L T 169 = 172 I C 724 = 47 L W. 110 = 1938 O W N 117 = 1938 O L R 61 = 1938 O A 54 = 1938 A L R 77 = A I R 1938 P C 31 = (1938) 1 M L J 426 (P C)

——*Right of—Necessary party impleaded in suit but not in appeal—Such party, if has right of second appeal*

Where a necessary party is impleaded in a suit but not impleaded in first appeal, such a party has a right of second appeal as he is interested in its right decisio
(*Bhide, J.*) PALA SINGH *v* MT HARNAMI
177 I C. 632 = 11 R L 348 (2
A I R 1938 Lah

APPROPRIATION. *See* CONTRACT ACT, SS. TO 61

ARBITRATION — *Award—Criminal complaint misappropriation—Disputes between parties referred to arbitration—Criminal Court not compounding case—Award acquitting accused holding that there was no misappropriation—Validity*

After filing a complaint for criminal misappropriation the parties submitted their disputes, the chief one con

ARBITRATION.

that the arbitrator has determined only such matters as were in dispute and were referred to him, and that the burden of proving that the arbitrator has awarded on matters not within the submission or has failed or

A I.R 1938 Sind 59.

——*Award—Nature of—Partition proceedings—Award declaring rights of parties in property without giving them possession—If merely declaratory.*

In partition proceedings, the award declared the rights of the parties in the property and did not state that possession was to be given to the parties

Held, that the award was merely declaratory and hence possession of the properties could not be given to the parties in the execution proceedings (*Tek Chand and Abdul Rashid, JJ*) SANT LAL *v* RAMAYA RAM.
40 P.L R 619 = A I.R 1938 Lah. 177.

——*Award—Setting aside—Grounds.*

An award cannot be set aside on the ground of ere is no contro
Bilaram, Ag.
HUSHALDAS *v*
174 I C 334 =
1938 Sind 59.

——*Award—Setting aside of—Submission of specific question of law.*

Where it is alleged that there was a submission of a specific question of law, it must be such that it can be

——*Award—Setting aside—Terms of reference directing physical partition—Award ordering sale of premises and dividing sale proceeds—Award—If should be set aside.*

Where the terms of the order of reference direct the of partition of the with the assist- he basis that each erein, the jurisdic ffecting a physical the premises and rties according to he terms of ref idge, J) Di

ARBITRATION.

certain and cannot make the award uncertain. (*Rup-*

If any one of the arbitrators was not present at all the sittings, that would affect the validity of the award. (*Niyogi, J.*) RAMDHAR RAM *v.* SANTADAR.

178 I C. 29=A I.R. 1938 Nag. 492.

——*Award—Validity—Piecemeal awards.*

It is not competent to an arbitrator to decide a matter piecemeal and deliver several awards, unless he is so

—*Right to apply to Court for stay of arbitration proceedings.*

The Court has a discretion to stay arbitration proceedings which have been initiated by a party on the

of provisions—Architect settling cost of work redone.

ARBITRATION ACT (1899), S. 15.

iated at Sialkot, Amritsar has no ie award, inas- to arbitration not be institut-ed at Amritsar. (*Addison and Din Mohammad, JJ.*) GOPI CHAND *v.* KHAZAN CHAND.

40=40 P.L.R. 598=A I.R. 1938 Lah. 226.

1—*Filing of award—Jurisdiction of.*

ntention that under the Arbitration Act to entertain proceedings is given to the District Judge alone and the Additional District Judge is not competent to entertain such proceedings is not maintainable as it is opposed to S. 21, Punjab Courts Act, which provides that the

MAL. A I.R. 1938 Lah. 838

——S 11—*Order declining to file award—Appeal.*

There is no provision in the Arbitration Act for an award. But heard as a revi- BANK OF NOR-

40 P.L.R. 79= 1938 Pesh. 3.

Conclusive nature

An award, once it is made and filed under the Arbitration Act, is conclusive of the matters which it decides until it has been set aside by legal process. A party dissatisfied with an award may either file a suit to set aside the award or he can apply under S. 14 of the Act. A *v.* BRIJMOHAN

42 C.W.N. 367.

rt — Effect of— to jurisdiction can be raised in

eable as if it were rt has to treat it n aggrieved party of the arbitrator cannot be permit-ted to raise the question in execution as the executing

1938 All. 232.

—*If a bar to en-*

ard to which the of a decree there- a Judge has no nullity and a suit is no bar to the *Ahmad, A.J.C.*)

ARBITRATION ACT (1899), S. 15.

Decree passed on award and executed by Court without objection—If ultra vires—Points decided in such proceedings—If res judicata.

Where in a reference to arbitrat
bility company a decree is passed b
executed without objection by the
question whether the decree could
Court or not does not become *res j*
is a nullity in such arbitrations because it is the award which has to be executed. It follows that the Court should ignore the decree and the execution of such decree is *ultra vires*. *A fortiori* a point decided in such *ultra vires* proceedings cannot become *res judicata*. It is the award which has to be enforced and it can only be enforced by the District Judge and no one else A I R. 1933 Pesh. 66, Rel. on. (*Almond, J C. and Mir Ahmad, J*) PEOPLES BANK OF NORTHERN INDIA, LTD. *v.* PADAM LAL. 177 I C. 659=11 R. Pesh 30= A I R 1938 Pesh. 54

ARMS ACT (XI OF 1878), Ss. 19 and 20—*Concealment of arms in loin cloth—Attempt to escape when challenged by Police—Offence committed.*

Where the accused who was travelling on horseback at 4-30 in the morning attempted to
challenged by two *sowars* of the mounted
was found carrying a spear-head concea
cloth.

Held, that the offence fell not under S. 19 but under S. 20 of the Arms Act. (*Skemp, J.*) JODH SINGH *v.* EMPEROR. 40 P.L R 921.

ASSAM LAND AND REVENUE REGULATION (I OF 1886), S 71—*'Encumbrance'—Interest acquired by adverse possession.*

Obiter—The interest acquired by a person by adverse possession by remaining in occupation of an estate for 12 years or more before the revenue sale adversely to the old proprietors is not an encumbrance within the meaning of S. 71 of the Assam Land and Revenue Regulation. (*Mitter and Biswas, JJ.*) JITENDRA KUMAR PAL *v* DEBENDRA CHANDRA SAH . 42 C.W N. 913=67 C L J. : -1

——**S 71**—*Recorded or unrecorded prop*
purchasing estate from stranger revenue sale
—Right to annul encumbrances

If a purchaser at a revenue sale who was not a recorded or unrecorded proprietor and who was not responsible for the encumbrance on the estate, later on sells his rights to one who was a recorded or unrecorded proprietor at the time of the revenue sale, the latter would step into the shoes of the former, and would be entitled to exercise all the rights, including the right to avoid or annul encumbrances, which the former had acquired by his purchase. (*Mitter and Biswas JJ*) JITENDRA KUMAR PAL *v* DEBENDRA CHANDRA SAHA. 42 C W N. 913=67 C.L J 380

ASSIGNMENT *See* LEASE

ATTACHMENT *See also* C P CODE, S. 60 AND O. 21, RR 46 AND 63.

——*Effect of—Administration suit—Decree—Attachment of money due to debtor by Co operative Society under R. 22 (6) (a), Madras Co-operative Societies Act—If confers exclusive rights on Society as against other creditors.*

An attachment creates no interest in, or charge on, the property attached in favour of the attaching creditors as against the other creditors. When an adminis-

BANKER AND CUSTOMER.

ties of a
footing,
of the
There
is no distinction in this respect between an attachment by a Civil Court under the C. P. Code and an attachment by a Registrar of Co-operative Societies under
the Madras Co-
hment of a money
on any higher or
by the Civil Court
(*Madhavan Nair, J*) NICHOLSON TOWN BANK, LTD., TANJORE *v.* VARADARAJALU NAIDU. 48 L W 849= 1938 M W N. 1127.

——*Execution of a warrant of—If a judicial act.*

It is a matter of considerable doubt whether the execution of a warrant of attachment by a process server can be considered a judicial act which may be considered as taking place at the earliest period of the day on which it takes place (*Grille, J.*) POONAMCHAND SHEORATAN *v.* MT. FULABAI. 177 I C 971= A I.R 1938 Nag. 309.

BANKER AND CUSTOMER—Forged cheque—Payment—Liability of Bank—Negligence *See* NEGOTIABLE INSTRUMENT ACT, S. 85. 1938 A L.J. 504.

——*Liability of banker—Customer having private*

Sanction of Advocate General—Necessity—C P. Code, S. 92.

A banker is not entitled to apply what he knows to be trust funds in discharge of or in reduction of a debt of a customer who has two separate accounts one in respect of his private funds and another in respect of funds of which he is a trustee If the banker does so, he can be compelled to make restitution of the moneys so applied. If the banker has the slightest knowledge or reasonable suspicion that the money is being applied or transferred by the trustee from the trust account into his private account in breach of a trust, and if he is

a co-trustee to recover such trust moneys wrongly applied by the banker in reduction of the private debts owed by the other co trustee is governed by Art. 120 of the Limitation Act, and the right to sue accrues when the trust funds are wrongly transferred or misapplied. But if the plaintiff co-trustee is kept in ignorance of a breach of trust the right to sue does not accrue until the trustee becomes aware of the fact. Such a suit does not fall within the purview of S 92, C. P Code, a suit by a co trustee against the banker to recover trust moneys misapplied by him and against another co trustee for accounts does not come under S 92 and may be instituted without the sanction of the Advocate-General (*Leach, C J, and Krishnaswami Ayyangar, J.*) NAGAPPA CHETTIAR *v* O R M O M.S P FIRM. 1938 M W.N 1017=48 L.W 577= A I R 1938 Mad 999.

——*Negligence of customer—Liability—Facts to be shown*

Even if there is a duty as between the banker and the customer in drawing a cheque in a proper mode, it must be shown in order to hold the customer liable for n

BANKER AND CUSTOMER

ligence in drawing cheques, that there was a breach of the duty by the neglect of some usual and proper precaution. (*Lord Wright.*) MERCANTILE BANK OF INDIA, LTD *v.* CENTRAL BANK OF INDIA.
172 I.C. 745=42 C W.N. 321=1938 O L R. 68 (2)=
65 I A 75=I.L R. 1938 Mad. 360=
1938 O W.N. 206=1938 A.L R. 100=
1938 P.W.N. 152=19 Pat.L.T. 147=
1938 M W.N. 552=4 B R 260=40 Bom L R. 713=
47 L.W. 329=32 S L R. 313=1938 A.L J. 273=
10 R.P.C. 169=1938 A.W.R. (P.C) 90=
66 C.L J 510=1938 O.A. 312=
A.I R 1938 P.C 52=(1938) 1 M.L J. 268 (P.C.)

——*Relationship—Nature of—Deposits on current account—If repayable only on demand.*

Where native bankers accept deposits on current account on a very extensive scale from their customers and conduct nearly every branch of ordinary banking business as it is understood in England, the relationship is not that of mere lender and borrower but there is an

Act—Prosecution of auditors of Bank for fals ments in balance sheet certified as correct—Or production of Bank's books—Legality—Right of tion to inspection—Duty of Court

There is really no conflict between S. 94 of
P. Code, and the Banker's Books Evidence Act. S. 5 of
the latter Act is the only section which can be relied
upon as containing anyth
Cr. P. Code. But all th
that no officer of the Ban
to which the Bank is not
duce any banker's book
proved under the Act or
the matters, transactions
order of the Court or
"Court" includes a Magi

prevents an order being ma
in the proper case. In a pro
of a Bank for offences in
the balance sheet of the
correct, an order for produ
under S. 94, Cr. P. Code,

state before the issue of the order not only what books he requires to be produced but also why their production is necessary with specific reference to the allegations in his complaint. Anything in the nature of a roving or fishing inspection of the books of a Bank should be prevented. But the prosecution cannot be denied the right of inspection of documents the production of
esirable for the
n held to be
of the party
P. D. SHAM-

BAR COUNCILS ACT (1926), S. 12.

DASANI *v.* SIR HUGH GOLDING COOKE.
I.L.R. (1938) Bom. 31.

BAR COUNCILS ACT (XXXVIII OF 1926), S. 10
—Professional misconduct—Employment of unregistered clerk—Negligence in not finding out, if plaint was filed —Failure to account for money.

An advocate was engaged to file a suit. The advocate employed an unregistered clerk and left the plaint with him for presentation. The clerk failed to file the plaint and thus the suit was not filed. The advocate however did not take care to see whether the suit had been filed by looking into the cause list and thus allowed his clerk to cheat his client. Besides this the advocate did not return or account for the money he had taken from his client for stamps and other incidental purposes.

Held, that the conduct of the advocate amounted to gross misconduct. (*Mya Bu, Offg. C.J., Ba U and Dunkley, JJ.*) O. A BARRISTER-AT-LAW, *In the matter of.* 178 I.C. 398=
A.I R. 1938 Rang. 423 (S B).

——S 10 (1)—*Misconduct—Advocate misappro- lient's moneys temporarily—Offence—Proper it.*

J. and Gentle, J.) An advocate who misap- his client's moneys is not fit to remain a f an honourable profession of advocates of Court, and the High Court should be failing if it does not direct the advocate's name to be

misconduct.

JJ.) ABINASH CHANDRA *v.* HEMANTA
42 C.W.N. 1111.

12 (3)—*Complainant—Right to be heard.*

3) of S. 12 of the Bar Councils Act cannot be intended to exclude the right of the Court to hear any person other than the persons mentioned in that sub-section. It is in the power of the Court, and in any ordinary case it would be its duty to hear the complainant, if he so desires (*Rankin, C. J., C. C. Ghose and Buckland, JJ.*) ABINASH CHANDRA *v.* HEMANTA KUMAR. 42 C.W.N. 1111.

——S. 12 (5)—*Assessment of costs.*

In a case where the complainant was unsuccessful before the tribunal whose findings were confirmed by the Court, the complainant was ordered to pay the costs of

the Advocate both in the enquiry before the tribunal and in the hearing before the Court. He was also ordered to pay the fees of the shorthand writer
preter in the enquiry before the Bar Counc

BENAMI—*Burden of proof.*

deeds bear the benamidar's name is necessarily consistent with the benami case and is of no essential weight on the one side or the other. Since therefore it is unlikely that there will often be any other relevant circumstances from which the conclusion can be drawn that a transaction is a benami one, the usual mode of proving that a purchase is a benami transaction is by showing that the

intention of the parties. All the peculiar circumstances and probabilities of each particular case must be carefully considered. Although no one of
ces taken by itself may be of any pa
afford any conclusive proof of the inte
the ownership from one person to the other, yet a combination of some or all of them, and a proper weighing and appreciation of their value, may well raise such a presumption of real ownership as to shift the burden of

Where a transaction is once made out to be *benami*, it is evident that
disappears from the title.
for that of the person bene
title to the property is with
Varma, JJ) SHEO GOBI
SINGH. 1938 P W N. 738=19 Pat L T 697

——*Presumption—Purchase by wife*

There is no presumption that when a wife possessed of considerable wealth and considerable income purchases a property in her own name the property must be regarded as one purchased *benami* for her husband. (*D. N. Mitter and Patterson, JJ*) MALEEH *v.* SHASI MOULI NAG.

——*Proceeding against benamidar bound*

A benamidar is ordinarily deemed
representative of the true owner, and
proceeding by or against the benamidar the person beneficially entitled is fully affected by the rules of *res judicata* Exceptions to this rule might exist only when the circumstances disclose a conflict of interest between the benamidar and the real owner. 46 I A. 1, Rel on. (*Mukherjea, J.*) THAKUR DAS NATH *v* KESHAB CHANDRA GHOSH. 42 C W N. 497.

——*Proof—Evidence requisite.*

In order that a property may be shown to be benami, it is not only necessary to show that it was purchased by another's money, but it is necessary to show that it was purchased by that other, benami. But circumstances in

India are such and the habits of society are such, that

vening law.
dar cannot maintain a suit if the benami transaction contravenes the provisions of any law. A benamidar cannot therefore, sue for possession, where
against the provisions of the
Act in so far as it effects a sale
or an indefinite period, neither of
der the Act if once it is found
e is a non agriculturist. (*Din Muhammad, J.*) LALA *v.* JAGE RAM 40 P.L R 784= A.I R. 1938 Lah. 789.

——*Suit by benamidar—Real owner's right to be joined as party.*

As the benamidar represents the real owner, it is open to the latter to apply to be joined in the action, but whether he is joined or not he is bound by the result of
K. Ghose and
DAS NANDI
37 C L J 320=
A.I R. 1938 Cal 874.

BENGAL, AGRA AND ASSAM CIVIL COURTS

district for mere administrative purpose, each and every munsif is a munsif for the district, although by an administrative order he exercises jurisdiction over a limited part of the district. It is no doubt quite right and

A preliminary decree in a mortgage suit was passed in the Court of the 4th Subordinate Judge of a certain place That Court was then abolished and the Court of the second Subordinate Judge of that place was placed in charge of the business of the fourth Court and the final decree in the mortgage suit was passed by the

for execution to the third Court There was a sale but that sale was set aside. After that fresh sale processes were served but before the sale date, the execution case was transferred under the District Judge's order to
fourth Court which had been reinstated in
The sale was held and confirmed by the fourth C
Held, that the whole of the proceedings
as a result of orders properly made by the D
in pursuance of his powers under Ss. 9 and
Civil Courts Act (*Derbyshire, C. J. and*
SISIRCHANDRA DUTT GUPTA *v.*

BEN. AGRA AND ASSAM. CIV. COURTS ACT (1877), S 13.

——S. 13 (2)—*Order by District ... ting work in Courts of Subordinate ... jurisdiction of latter.*

Under S. 13 (1) of the Civil Courts Act, the Local Government fixes as well as alters the local limits of the jurisdiction of the Civil Courts The local jurisdiction

properties are situa

——S 22—*Order under S. 476, Cr. P ... Power of latter to ... Judge.*

An order of a Munsiff refu under S. 476, Cr. P. Code,

(*Jack and I.* GOPI NATH ... 68

——S 37— *of Mahomedan Law.*

as a civil contract and the agreement to pay a certain amount of dower is a part of the contract of marriage, the mere principles of the law of contract as embodied in the Indian Contract Act are insufficient of themselves to account for the main features of the law of dower.

administrative or judicial districts.

The areas mentioned in S 1 (3) of the Bengal Agricultural Debtors' Act need not be administrative or judicial "districts". Under the Act, the Local Government can notify an area the entirety of which lies within

BEN. AGRI. DEBTORS' ACT (1936), S. 34.

...but which does ... or they may ... t and partly in ...DAS TUNSOOKDAS v. CHOGEMULL 42 C W.N. 293= A I.R. 1938 Cal. 402.

A.I R. 1938 Cal 362.

stayed and ... Court. (*A* ... TORMULL ...

——S. ...

... the meaning ... Act when it ... f the Letters ... *J.*) SATISH ... TD ... 1938 Cal. 753.

——Ss. 34 and 40—*Civil Court receiving notice—Jurisdiction to decide if debtor resides or property is situate within Board's jurisdiction.*

On receipt of a notice under S. 34 of the Bengal Agri... e to ... not ... not ... atter ... ourt ... fficer ... *J.*) ... 37= ... 176. ... *m, if ... resi-* ... oard ... f the ... ated by the Civil Court receiving a notice under S. 34 of the Act from the Board. It is, at any rate, in the first instance, for the Board, subject to such right of appeal as the Act gives, to determine whether it can exercise jurisdiction over any particular applicant (*Panckridge,*

J.) NURSINGDAS TUNSOOKDAS *v.* CHOGEMULL.
42 C W.N. 293=A.I R. 1938 Cal. 402.

——S. 34—*Court receiving notice under—If can go into question whether one is a debtor under the Act—Anomaly in construction.*

It is not open to a Court to which notice under S. 34 of the Bengal Agricultural Debtors' Act is sent to decide or even consider whether the debtor comes within the Act or whether he does not, that question rests solely with the Board. Thus a Debt Settlement Board can hold up a suit started in the Court of the Subordinate Judge,

not have been realised or foreseen when the Act was drafted or passed (*Costello, Ag C J. and Edgley, J*) BHAGAWAN DAYAL *v.* CHANDULAL.
I L.R. (1938) 1 Cal 256=174 I C 51=
10 R C 612=A.I.R. 1938 Cal 23

——S 34—*Notice issued but not received by Court—Proceedings, if void.*

The expression "give notice" implies not only the issue of notice but also the receipt of notice by the Court. Before the notice for stay is actually received by

——S 34—*Notice issued by Board before consideration of application under S. 12—If premature.*

It is not necessary before the issue of the notice by the Board under S. 34 of the Bengal Agricultural Debtors' Act that a date and place for the consideration of the application by the debtor must be fixed under S. 12, or that notice of such date must be given to the parties and the parties heard (*M C Ghose and Biswas, JJ.*) JOGESH CHANDRA *v.* MAHES CHANDRA.
42 C W N 1179=A I R 1938 Cal 750.

——S 34—*Notice received by Civil Court—Its territorial jurisdiction not lying within any notified area—Duty to issue stay order.*

all Civil Courts in Bengal are to treat the proceedings of such a Board in accordance with the provisions of the Act Accordingly, a Civil Court in Bengal receiving a

SINGDAS TUNSOOKDAS *v* CHOGEMULL.
42 C.W N. 293=A I R. 1938 Cal 402.

——Ss 34 and 20—*Notice received by Insolvency Court—Power of latter to decide if insolvent is 'debtor'.*

Under S. 20 of the Bengal Agricultural D
if any question arises in connection with
before a Board under this Act, whether a

debtor or not, the Board shall decide the matter and it would seem that such a decision must precede any notice issued under S. 34 of the Act. It is not for the Insolvency Court which receives the notice to decide, more especially without taking any evidence whatsoever, whether a person is or is not a debtor within the meaning of the Act. (*Bartley and Nasim Ali, JJ.*) SHIB DULAL *v* KISHOREGANJ LOAN OFFICE, LTD.
176 I C 927=11 R C. 191=
42 C.W N. 173=A.I R. 1938 Cal. 194.

——S. 34—*Notice for stay—Powers of Civil Court.*

fact or on a question of mixed law and fact within its jurisdiction as provided for by the Act, as (*e g.*) that the debtor was a debtor within the meaning of the Act and that he ordinarily resided within its jurisdiction, the Court cannot sit in judgment over such decision and override it and then refuse to stay the proceedings in accordance with the notice. (*S K. Ghose and Nasim Ali, JJ.*) HARISH CHANDRA PAL *v.* CHANDRA NATH SAHA. I L R. (1938) 2 Cal 155=
42 C.W.N 411=A I.R 1938 Cal. 369

a debtor or not, the Board shall decide the matter. This section was, of course, enacted in relation to the definition of 'debtor' under S. 2 of the Act. A Civil Court receiving notice for stay under S 34 has, therefore, no jurisdiction to decide such a question. (*Henderson, J*) BASIRUDDIN AHMED CHOWDHURY *v* NOAKHALI SWADESHI STORE 66 C L.J 539.

——S 34—*Notice for stay in respect of joint debt—Power of Court to enquire if application to Board was valid.*

A Civil Court on receipt of a notice under S 34 of the Bengal Agricultural Debtors' Act in respect of a debt for which several persons are jointly liable, has no
made to the
regard to the
the Civil Court
settlement of
and that such
application actually includes a debt in respect of which a suit or other proceeding is pending before it, it has no option but to stay the suit or proceeding. (*Edgley, J.*)

sented—Exclusive jurisdiction of Board

After a petition has been filed purporting to be filed under S. 8 of the Bengal Agricultural Debtors' Act and before the events specified in S. 35 (*a*) and (*b*)
rutory
not
ard,

BEN. AGRI. DEBTORS' ACT (1936), S. 34.

(*Ameer Ali, J*) BAIJNATH TAMAKUWALLA *v.* TORMULL. 42 C.W.N. 481=A

——S. 34—*Question of rateable*
after sale—Proceedings, if must be

Once a sale has taken place, the debt has ceased to exist to the extent of the purchase price and therefore there is no proceeding pending with regard to that amount of the debt in the Civil Court and so at that stage the notice under S 34, can have no effect. As between the sale and the confirmation thereof various kinds of proceedings may take place, but those will not be treated as keeping the proceedings

A.I.R. 1938 Cal. 549.

——S. 34—*Receipt of notices for stay under S. 34—Civil court, if competent to decide whether debtor is a*

fact, a proceeding with regard to the debt which has been included in the application under S. 8 or in the statement under sub S. (1) of S. 13 as the case may be, the civil Court has got no Jurisdiction to decide the question whether the debtor is a debtor within the meaning of the Act. The Act has set up a special tribunal for the determination of the question whether the person is a debtor or not. It would be inconsistent with the provisions of the A
into and decide
Nasim Ali, JJ.)
SARKAR.

42 C.W.N. 415=A I R. 1938 Cal. 375.

——S. 34—*Sale of entire mortgaged property in execution of decree—Decree-holder purchaser allowed set-off against portion of decretal debt—Notice received by Court before confirmation of sale—Proceedings, if should be stayed.*

In execution of a mortgage decree the e
gaged property was sold for less than
amount and was purchased by the decree h
prayer for set-off was allowed and the decr
the extent of the amount realised by the sale
out. After the sale had taken place and b
confirmed the Court received notice under S
Bengal Agricultural Debtors' Act for sta
proceedings. This the Court refused to do.

Held, that the debt to the extent to which it was satisfied by the aforesaic
that as the entire mortgag
there was no applicatior
O. 34, R. 6, C. P. Code, there was nothing else for the Court to do, and that, therefore, the Court acted rightly in refusing the stay. (*S. K. Ghose and Nasim Ali, JJ.*) JATINDRA MOHAN MANDAL *v.* ELAHI BUX.

42 C.W.N. 530.

——S. 34—*Sale in execution of decree—Purchase by decree holder for less than decretal amount—Notice received by Court before*
to stay proceedings.

Where in execution of a
put up to sale and purcha
less than the decretal amo
the extent of the price pai
ecuting Court is not boun
on receipt of a notice und

BENG. ALLUVION AND DILUVION REG. (1825), S 4.

akes an
4 would
NATH
v. DHANANJOY MONDAL. 178 I.C. 186=
42 C.W.N. 218=A.I.R. 1938 Cal. 261.

——S. 34—*Sale in pursuance of money decree—Purchase by decree-holder for less than decretal amount—Notice received by Court before confirmation of sale—Jurisdiction to stay proceedings.*

Where the judgment-debtor's properties were sold in

although the sale has not been confirmed. (*Bartley and Nasim Ali, JJ.*) JAGABANDHU ROY *v.* BHUSAI BEPARI. 178 I C. 344 (1)=42 C W.N. 217=
A.I.R. 1938 Cal 256.

no proceeding pending before the Court with regard to a debt which may form the subject of an application under S. 8 of the Bengal Agricultural Debtors' Act. Consequently, the Court is not bound to stay insolvency proceedings on receipt of a notice from the Board under S 34 of that Act after the order of adjudication. (*S.K. Ghose and Patterson, JJ.*) SATISH CHANDRA *v.* NAOGAON UNION BANK, LTD. 42 C.W N. 1216=
A I.R. 1938 Cal. 753.

dition precedent—Act to
issue and receipt of

In order to obtain a stay order of the nature contemplated by S. 34, Bengal Agricultural Debtors' Act, the Act must be in operation both in the district in which the Board is situated to which an application is made for the settlement of a debt and also in the district in

Officer—High Court's power of revision—C. P. Code, S. 115.

Debtors Act, although such officer is a Munsif. (*S. K. Ghose and Edgley, JJ.*) RAM KRISHNA SUKUL *v.* ALI NEWAJ 178 I C. 172=42 C.W.N. 892=
A.I R. 1938 Cal 688.

BENGAL ALLUVION AND DILUVION REGULATION (XI OF 1825), S. 4 (5)—*Applicability—*
—Several estates
ode of apportionment.
not lay down any rule
f the alluvial accretion
are concerned and the
one riparian estate or
neral provision contain-
lation applies and the
est obtainable evidence

of local usage and failing that, by general principles of equity and justice. It would not be proper to lay down any hard and fast rule on the point. The general principle underlying an apportionment should be to secure to each riparian owner a portion of the new waterline

selling goods in hats—*Assessment to cess*

Where the vendors attending the *hats* do not sit in any particular place and tolls or fees are realised by the plaintiff on the quantity and quality of articles actually sold and no fee is payable if there is no sale, and fees

selling their goods in the *hats* and does not therefore represent the "annual value of land" as defined in S. 4 of the Cess Act Consequently an assessment to cess under Chapter II of the Act on the basis of such income is illegal and *ultra vires*. (*Mitter and*
SECRETARY OF STATE *v.* HINGUL KUMA
42 C.W.N 169=

——Ss. 5 and 6—Scope and effect of.

that notice was in proper form—Non production of copy —Effect.

Where there is the finding of service of notice under S. 54, the Court is entitled to presume unless the contrary is shown that this referred to service of a notice framed in accordance with law. The mere non-production of a copy of the notice cannot be regarded as in any way militating against the presumption of correctness of form. (*Biswas, J*) KAMAL KRISHNA *v.* SARAT KUMAR ROY **A.I.R 1938 Cal. 145.**

——S 56—*Liability to cess—Issue of notices under Ss 52 and 54—If a condition precedent*

It is clear on the wording of S 56 that the liability of any owner or holder of rent free lands to pay any cess to the owner of any esta
cannot arise unless there has l
both the notices under Ss. 52
notices is indeed a condition
such liability. (*Biswas J.*
SARAT KUMAR ROY. **A.I.R. 1938 Cal. 145**

——S 64-A—*Scope of—Niskar lands in separate*

but the co-sharers are each in separate possession of specified quantity of land within the niskar, either in khas or through tenants, each such co-sharer will be liable in respect of the land held or owned by him, and the principle of joint and several liability embodied in S. 64 A cannot be extended to make a co sharer in possession of a separate piece of land liable for the lands separately held by another co-sharer. (*Biswas, J.*)

KAMAL KRISHNA *v.* SARAT KUMAR ROY.
A.I R. 1938 Cal. 145.

——S. 93—*Scope—Jurisdiction of Civil Court—Suit questioning valuation by cess department on ground that it is wrong—Bar of.*

The Civil Court has jurisdiction to grant relief in a
nent has acted *ultra vires* and
n income which is not subject
Act is no bar to such a suit.
r a suit to establish that the
son has been assessed is not
ut it does bar a suit in which
the cess department has acted
that its decision is wrong
J.) BRAJA BEHARI DASS *v.*
17 Pat. 436=4 B R 475=
P. 517=1938 P.W.N 459=
174 I C. 752=19 P.L T 352=
A I R. 1938 Pat. 362.

——Sch D—*Words 'his' and 'his lands'—Meaning of.*

The word 'his' in Sch. D means 'heir' and words 'his
'owners and holders'
swas, J.) KAMAL

A.I.R. 1938 Cal. 145.

BENGAL CHILDREN ACT, S. 40—*Custody—Meaning of.*

The question whether a person has the custody of another within the meaning of S. 40 of the Bengal

COURT OF WARDS ACT (IX OF
—*'Proprietor of an estate'—Executrix and tenant for life under a will—If a proprietor.*

Where a Hindu testator had bequeathed a life estate in all his properties to his wife and also appointed her as an executrix, the widow after the death of the testator is the 'proprietor of the estate' within the meaning of S. 6 of the Bengal Court of Wards Act (*Panckridge, J.*) INDUMATI DEBI *v.* BENGAL COURT OF WARDS.
I L R. (1938) 1 Cal. 476=42 C.W.N. 230=
A I R. 1938 Cal 385.

——S 6 (a)—*Declaration by Court of Wards under —If a Judicial act—Notice to persons affected—Necessity.*

In making a declaration that a person is a disquali

A I.R. 1938 Cal 385.

——S. 6 (a)—Declaration under—If a matter con
revenue under S. 226 (1) of Government of
t. *See* GOVERNMENT OF INDIA ACT, S 226
I.L R. (1938) 1 Cal 476=
A I.R. 1938 Cal. 385=42 C.W.N 230.

. 7—*Taking charge of property—Facts to be*
d prior to—Opportunity to person affected to show competency to manage.

Before the Court of Wards can take charge of the property of a person under S 7 of the Act, after a declaration of the incompetency of the proprietor to manage it, the Court of Wards must consider whether there exist materials to warrant such a declaration. Principles of natural justice require that the proprietor should have an opportunity of testing those materi

BENGAL COURT OF WARDS ACT (1879), S. 10.

and of establishing competency to manage. (*Panckridge, J.*) INDUMATI DEBI v. BENGAL COURT OF WARDS. I.L.R. (1938) 1 Cal 476=

retrospective in its operation and its provisions apply only to the person or property of a Ward, and other

where as a result of protecting the property of a ward, the interests of others are adversely affected. (*Costello, Ag.C.J. and Edgley, J.*) PROMODE CHANDRA SINHA SARMA v. NARENDRA N... CHOUDHRY. 175 I C ...
66 C.L.J. 321= ...

——S. 10 (c)—*Appointment* ...
Court.

Under S. 10 (c) of the Court of Wards Act, the Court can appoint a receiver in respect of the property under the management of the Court of Wards. But

Whether a suit is brought before or after the Court of Wards has assumed charge of the property of a disqualified proprietor, the Co... Collector should be ma... the ward in the suit. ... owing to the Court of ... suit, the amendment m...

the proper parties are on the record and are dealt with on the correct footing, the mere want of formality will not make void the bargain of the parties and the decree of the Court. Where therefore in a suit against the proprietor, the Manager, Court of Wards, is added as an additional defendant, on the Manager assuming charge of the property, and a compromise is arrived at between the parties, the validity of the compromise depends entirely upon whether the Court of Wards consented on behalf of the proprietor. If they did, the absence of a ...
dian *ad lite*...
does not in...
BRAJA SU...
DEO ...
32 B.I ...
19 Pat L T ...
4 I ...
A.I.R ...
——Ss ...
Manager o...
The ma...
not a nece...

BENGAL ESTATES PARTITION ACT (1897), S. 81.

S. 51 of the Court of Wards Act is not applicable to the High Court under S. 56, and therefore the ordinary procedure must apply. Wards of Court are not persons ...ithin the meaning of C P. Code. ...ONAL INSURANCE CO., LTD. v. ... TAGORE. 42 C.W.N. 374.

...ES PARTITION ACT (V OF ...

...—*Scope—Partition by Collector—Lands claimed as raiyati treated as bakasht—Suit in Civil Court for declaration that such land is occupancy jote or falls under S. 22 (2), B.T. Act, and for decree directing to be entered as jama in batwara papers—Maintainability—Specific Relief Act, S. 42—Jurisdiction of Civil Court.*

The High Court (or a Civil Court) cannot set aside or alter a partition which has been effected by a Revenue Court of competent jurisdiction, it cannot be said that the Revenue Court was acting without jurisdiction

which has been partitioned by the Collector, who was a party to the collectorate partition proceedings and was allotted his due share of the assets of the *mahal* which was fixed in his presence, cannot maintain a suit for

cerned, but also so far as the other co sharer landlords are concerned Such an order is clearly beyond the

tion should be re opened in order to relieve the plaintiff of the hardship involved. (*Fazl Ali and Madan, JJ.*) BHAIRO SINGH v. SHAMSUNDER PRASAD.
173 I C 849 = 10 R P. 453 = 4 B.R 347 =
18 P.L.T. 843 = 1937 P W N 816 =
A I R 1938 Pat. 76.

——S. 81—*Scope—Rent fixed by Batwara officer on basis of illegal enhancement made prior to partition—Party holding landlord's interest as well as tenant's interest not objection—Subsequent plea of illegal*

BENGAL ESTATES PARTITION ACT (1897), S 99

[illegible]

suit by the plaintiffs for rent fixed under ... the defendants pleaded that the enhancement of rent prior to partition was void under S. 29 of the Bihar Tenancy Act and hence illegal.

Held, that the defendants, having got the advantage of an enhanced asset ... and having allowed ... that basis, could not ...

[illegible] ..., *J.*) [illegible] ... 509

——S 99—*Applicability—Lessee admitted sharer—Possession for over 12 years continuous ... of—Right of other co-sharers to eject.*

In applying the provisions of S. 99 of th... Estates Partition Act, a distinction must be ... tween occupancy rights which are the creation ... and the rights of a lessee or a tenure holder ... the result of a contract between a co-sharer ... person in possession. It is doubtful if after occupancy rights have accrued by 12 years continuous possession, any other co-sharer would be entitled to eject the raiyat or lessee under the provisions of S 99. (*Courtney Terrell, C J and James, J*) RAJA RAM RAI *v.* NIRANJAN RAI 17 Pat 143 = 1938 P.W N 371 = 19 Pat.L T 337 = 175 I C 943 = 11 R P 35 = 4 B R 658 = A I R 1938 Pat 297

BENGAL EXCISE ACT (V OF 1919), Ss 46 and 62—*Accused charged under S 46 having conviction—Summons case procedure—Legality*

Where the accused who is charged with ... under S 46 of the Bengal Excise Act is ha... hanced punishment under S. 62 of that Act by reason ...

mons case procedure instead of the procedure for a warrant case is not a mere matter of form and would not be cured by S 537, Cr. P Code (*Biswas, J*) SUFAL GOLUI *v* EMPEROR 42 C W N 222 = 174 I C. 454 = 10 R C 674 = 39 Cr L.J. 438 = A I R. 1938 Cal. 205.

[illegible]

Where in a case under S. 6 (1) (*e*) of the Bengal Food Adulteration Act the Magistrate acquitted the accused and directed the return of the tins of mustard oil to him, and the order of acqu... from, the Sessions Judge cannot, ... the basis that the order of acquitt... the forfeiture of the tins in case ... the analyst is against the accuse... *bridge, JJ.*) KISHAN LAL *v.* SASHI BHUSAN 42 C.W N 220

——S. 13 (2)—*Some out of several tins seized from accused found to contain adulterated ghee—Order of forfeiture in respect of all tins—Appellate Court setting*

BENG. LAND REGN. ACT (1876), S. 57.

... rest of tins ... he accused ... adulterat- ... sed under ... m Act and ... t, directing ... feited. On ... nviction but set aside the order of forfeiture in respect of 13 tins. He then ordered that samples should be taken from them and sent to the Public Analyst after which those found to be adulterated ghee would be destroyed

Held, that when the Sessions Judge set aside the ... tins of ghee, he should ... the tins to the accused. ... I LAL *v.* CHAIRMAN, ASANSOL MUNICIPALITY. 42 C.W N. 731.

——S. 14 (2)—*Article of food sent for analysis before case—Costs of analysis—Power of Court to order*

... Court. In such a case, therefore, the Court cannot order for payment of the costs of analysis under S. 14 (2) of the Act. (*Patterson, J.*) ATUL CHANDRA MODAK *v* EMPEROR 42 C.W N 760.

BENGAL LANDLORD AND TENANT PROCEDURE ACT (VIII OF 1869)—*Agricultural lease—Forfeiture clause—Validity—Termination of lease on forfeiture—Form of notice*

Act VIII of 1869 leaves landlords and agricultural ... contract There... ender invalid a ... It cannot be ... ailed of by the landlord, in spite of a contract to the contrary contained ...

If the landlord intimates to the tenant before suit his election to determine the lease, there is a valid termination of the lease (*Mitter and Biswas, JJ*) FRAVAT CHANDRA SYAM *v* BENGAL CENTRAL BANK, LTD. I.L.R (1938) 2 Cal 434 = 42 C W N 761 = A I R 1938 Cal 589.

... E ... of a ... he proceedings were quite in accordance with S 8 of that Regulation. (*Din Mohammad, J*) AHSAN ELAHI *v.* ALLA UD-DIN. 40 P L R 798 = ...

[illegible]

possession of certain lands on the ground that they were purchased by him out of his own funds. The plaintiff and the defendant were members of a Maho... family. The lands were mutated in the plainti... alone. The defendant contended that he got ...

BENG. LAND REV. ASSESS. REGL. (1828), S 13

66 C L J 455 =

BENGAL LAND REVENU (RESUMED) REGULATION

—Government granting lands Government if a 'landlord'—E 'revenue', if only 'rent'—Grant ment of rent in case of diluvion—

By the force of S. 13 of the R alone, the state does not become a landlord as

'landlord' described to mean grantee can the B. T. being dilu BASHINI C

——S. 13—*Grant of waste land in Sunderbans to lotdar under Waste Land Rules—Effect of—Part of grant diluviated—Claim for abatement under S. 52, B. T. Act—If sustainable.*

in the said section is the right of property in Sovereign

executors and assigns. It gave the grantee a right to engage with Government on conditions applicable to owners of temporarily settled estates.

Government demand, which was termed 'revenue' on the results of the said measurements was to be the only adjustment during the currency of the term of 99 years. The grant was included in the Register A maintained under the Land Registration Act as Touzi. The lotdar claimed abatement of the amount payable by him to the

BENG. LAND REV. SALES ACT (1859), S. 5.

STATE. Cal. 229.

ACT (XI —Raiyati of, for

vernment *khas* mahal can revenue under the same 1859. (*S. K. Ghose and* ESLAM *v.* ANIMESH 43 C W.N. 46.

anuary and 28th March dates in each year for payment of arrears of land revenue—Sum demanded as payable in respect of January kist not paid before 12th January—Sale held after 12th January—Validity.

The expression 'kist', as explained in the Tauzi

revenue, 12th January and 28th March in each year as

section is attracted, is a sale contrary to the Act and such sale cannot be challenged on that ground in a Civil Court, unless such a ground had been specified in an appeal made to the Commissioner. (*R. C. Mitter, J.*) SUBODHBALA GHOSE *v.* HARENDRA NATH DAY. **A.I.R. 1938 Cal. 584.**

BENG. LAND REV. SALES ACT (1859), S

——**Ss 6 and 14**—*Payment in respect of s… account after latest day of payment—Effect ordered under S. 14.*

The provisions of the last paragraph of S. 6 of the Act are attracted to sales not only of the entire estate, but also of shares of estate. The payment by the defaulting proprietor of the arrears due in respect of a separate account after the latest day

42 C W N. 1203

——**S. 8**—*Revenue received by Collector by money order on last date—Money not credited to intended taluk owing to mistake in description of taluk—Sale of taluk —If void.*

A Collector received the revenue by money order on the last date for payment of revenue. This money could not be credited to the account of the intended taluk on

Collector for crediting the same in respect of the defaulting taluk. The sale therefore could not be said to have been without jurisdiction. (*Bartley and Nasim Ali, JJ.*) SAYED AHAMED *v.* SAMSUDDIN AHAMED.

175 I C 745=11 R C 6=A I.R 1938 Cal. 275.

——**Ss 13 and 14**—*Sale of separate account—Proceeds insufficient to liquidate arrears—Other separate accounts also in arrears—Power of Collector to order sale of entire estate before putting them to sale*

If a separate account in arrears is put up to sale and the sale proceeds do not satisfy the arrears due thereon,

them to sale as the sale proceeds, if any, of those accounts could not be utilised to wipe off the arrears or the balance of arrears due on the separate account first exposed to sale (*Nasim Ali and Henderson, JJ*) NIRMAL NALINI DASI *v* HARSAMUKHI DASI

I.L.R (1938) 2 Cal 549=42 C.W.N 1203.

——**S. 14**—*Declaration under—Neglect of other proprietors to purchase share in default—Effect of.*

The effect of a declaration under S. 14 followed by the neglect of the other recorded p… the share in default by paying … respect thereof is that the separate … On the closing of the separate accounts, a general account of the receipts of revenue in respect of the entire estate must be made and if on such account being made, there appears an arrear of the revenue, the entire estate is to be notified for sale. (*R C. Mitter, J.*) SUBODHBALA GHOSE *v.* HARENDRA NATH DAY.

A I.R. 1938 C.

——**Ss 31 and 13**—*Sale proceeds of one account—If can be appropriated towards arre… from other separate account.*

The proceeds of sale of … der S. 13 of the Act can … the arrears due from that … arrears due from other

——**S. 33**—*Appeal to Commissioner not presented in time—Suit in Civil Court on ground that sale was contrary to Act—Maintainability.*

The appeal contemplated in S 33, Bengal Land Revenue Sales Act, is an appeal made to the Commis… 1868, that is, an appeal … ommissioner of Revenue … sented to him within 60 … to the Collector within 45 days of the sale for transmission to the Commissioner. An appeal not so presented is to be treated as no appeal and no attack can be launched on the sale in a suit on the ground that the sale was contrary to the provisions of the Act, the estate being admittedly in arrears. (*R. C. Mitter, J*) SUBODHBALA GHOSE *v.* HARENDRA NATH DAY.

A.I R 1938 Cal 584.

——**S. 33**—*Revenue sale—Setting aside—Money paid to credit of estate—Misdescription of touzi—Effect of.*

… nullity … istence … old the … h that … ing to … When … paid … rmissi… debit entries were made by the Collectorate officers to which the proprietor was not a party. When however there is a misdescription of the touzi and it is not undisputed that money has been placed to the credit of a particular estate, different considerations arise. The Collector may in such cases justly hesitate to credit the amount to one estate rather than to the other The rules framed by the Revenue Department make detailed provisions, as to the duties of the Collectorate officers who are entrusted with the charge of receiving these payments in such cases Where there is a violation of these rules by

MANODA MOHINI DAS *v.* SAKINA BIBI.

43 C W.N. 43= A.I.R 1938 Cal. 738.

——**S 34**—*Sale of holding for arrears of revenue—Title suit by owner against purchaser—Sale set aside on compromise—Compromise decree not executed within six months—Effect on sale.*

A *raiyati* holding in a Government *khas* mahal was sold for arrears of revenue under Act XI of 1859. The owner, after an unsuccessful appeal to the Commissioner,

decree. According to the terms of compromise, the revenue sale was set aside on the ground that the Collector had no jurisdiction to sell a *raiyat* holding under the Act.

Held, that there was no judicial determination of the

… er it … AM

——S. 37—*Occupancy holding at fixed rate of rent—Mokarari right created subsequent to Permanent Settlement—Right of purchaser to enhance rent.*

Raiyats having a right of occupancy at a fixed rate of rent are not liable to be ejected under S. 37 of the Revenue Sale Laws (Act XI of 1859). But if their mokarari right was created subsequent to the Permanent Settlement, the purchasers at the revenue sale are entitled to treat them as occupancy raiyats whose rents are liable to enhancement according to law. (*M. C. Ghose, J.*) JANAKI NATH DE SARKAR *v.* RAJANI NATH KAR. 67 C.L J. 470

——S 37, Excep. 2—*'Settlement'—Meaning of—Settlement of estate for term and resettlement after expiry of term—Tenure created by settlement-holder before resettlement—If protected from annulment.*

The word "settlement" in the second exception to S. 37 of Act XI of 1859 means the settlement of the estate Where an estate was settled by the Government for a term of 40 years with the option of resettlement for a period of 30 years after the expiry of that term, and the settlement holder created a tenure and after the

settlement, and that as the tenure was not in existence at the time of the original settlement, it was not protected from annulment after the revenue sale under the second exception to S 37 of the Act. (*S. K. Ghose and Edgley, JJ*) NILIMA PROVA MANTOSH.

BENGAL LAND REVENUE REGULATION (VII OF 1822)

summary settlements of land revenue up to Rs. 500 or settlements for colonisation are not binding Government unless and until confirmed by the Revenue. The acceptance of a kabuliyat

BENGAL LOCAL SELF-GOVERNMENT ACT (III OF 1885)—*District Board—Lease b. Lease contravening R. 95 of Rules publ. Government.*

A lease for 15 years granted by the I without the previous sanction of the Divisi sioner contravenes the provisions of R 9 published under the statutory authority I Government and is, therefore *ultra vires.* *J.*) AMOLOK CHAND KAPARIA *v.* KESH

——S. 148—*Order of authority app election disputes under S. 138 (a)—In revision.*

S 148 of the Local Self Government Act precludes interference by High Court by way of revision with any order made by the authority lawfully appointed to decide disputes relating to elections under S. 138 (*Bartley and Nasim Ali, JJ.*) PHAL SARKAR *v.* MAULVI DEDAR HUSSAIN F

HURY. 174 I C. 879 = 10 R C 738 = 42 C.W.N. 283 = A I.R. 1938 Cal 240.

——S. 148—*Order of District Magistrate on petition under Rule 1 (A) of Election Rules—Revision, if lies—C. P. Code, S. 115.*

An application in revision under S. 115, C. P. Code, does not lie to the High Court from an order passed by the District Magistrate on a petition filed under Rule 1 (A) of the Election Rules. (*S. K. Ghose and Nasim Ali, JJ.*) TARA PROSAD SUKUL *v.* ABUL KASAM KHUNDKAR. 42 C.W.N. 441 = A.I.R. 1938 Cal. 359.

BENGAL MONEY-LENDERS' ACT (VII OF 1933), S. 4—*Applicability—Pending suits.*

S. 4 of the Bengal Money Lenders' Act does not apply to suits instituted before the commencement of that Act. (*Nasim Ali and Henderson, JJ.*) HARI MOHAN GOVINDA CHANDRA DAS *v.* AMRITALAL CHOWDHURY. 42 C W N. 975 = A.I.R 1938 Cal 665.

BENGAL MUNICIPAL ACT (III OF 1884), S. 15—*Frame of suit.*

The fact that a suit is filed against the Chairman of

MUNICIPALITY. 68 C.L J. 267 = 42 C.W.N. 768.

——(XV OF 1932), Ss 39 B and 43—*Order deciding application under S. 36—Revision—Power of*

A.I.R 1938 Cal. 465.

and 43—*Order of District Judge on filed, under S. 36—Power of High —Government of India Act, S. 224.*

the provisions of Ss. 39-B and 43 of the Bengal

JJ.) BAN BIHARI MUKHERJI *v.* MAKHAN LAL

to apply only in those cases where the plaintiff claims damages or compensation for some wrongful act commit-

for a declaration combined with a suit for confirmation of possession and injunction. (*Jack, J.*) BIDHU BHUSAN MAJUMDAR *v.* COMMISSIONERS OF THE BARANAGORE MUNICIPALITY. 42 C W.N. 467.

——S 535—*Suit for illegal omission of Municipality—Notice, if necessary.*

The words "for any act purporting to be done under this Act" in S. 535 of the Bengal Municipal Act include an illegal omission Consequently a suit for a non feasance or illegal omission of the Municipality would be bad if the notice required by the section is not given.

AGRA AND ASSAM CIVIL COURTS ACT.

BENGAL OPIUM SMOKING ACT (X OF 1932), S 8—*Presumption under—When arises.*

The fact that the accused and two other persons were sitting in a room together and that one of them was smoking a preparation of opium, establishes the presumption referred to in S 8 of the Bengal Opium Smok

visions (*Jack, J.*) HARSHAMUKHI DASI *v.* NABA KRISHNA ROY. A I R. 1938 Cal 609

——S 67—*Security bond in favour of certificate-officer—Nature of—District Board, if can sue upon.*

A judgment-debtor under
Demands Recovery Act, in r
was released from such arrest
security bond in favour of the
to stand surety for the payment
due to the District Board, and to produce the judgment debtor on a particular date. In a suit on the bond by the District Board,

barred by any other principle.

Held, further, that case came within the well-recognised exception to the general as laid down in *Tweddle*

v. Atkinson, founded on the creation of a trust, and that the certificate-officer being a nominee or trustee of the District Board, the Board was entitled to sue upon the contract. (*Henderson and Biswas, JJ.*) MALDA DISTRICT BOARD *v.* CHANDRA KETU NARAYAN SINGH. I.L.R (1937) 2 Cal. 698= 66 C.L J. 373.

BENGAL PUBLIC GAMBLING ACT (II OF 1867), S. 11—*Counterfoil receipts bearing names of horses—If instruments of gaming.*

It is doubtful whether the view that counterfoil
horses on which bets
ere found in the
ents of gaming is
counterfoils was
ar evidence as to
what the accused was doing at the time of arrest. (*Patterson, J.*) AMULYA DHONE GHOSE *v* RAM SUNDAR SINGH. 175 I C. 446=10 R C. 803= A.I R. 1938 Cal. 422.

——S. 11—*Possession of racing guides and notes on horses—Inference from.*

Having racing guides and notes on horses does not
accused were taking
ul for men to possess
specially when they
to attend the races.
JMAR MUKHERJEE
I.R. 1938 Cal. 713.
859)—*Applicability*
—*lote non agricultural*
ultural in character,
have no application.
JJ.) PRASANNADEB
A I R. 1938 Cal 866.
rounds — Contents of

An under tenure holder is liable to pay at enhanced

BENGAL SUPPRESSION OF TERRORIST OUTRAGES ACT (XII OF 1932), Ss 36 and 38—*Scope and effect.*

lished that a person has in his possession any document of the nature defined in S. 36, that person is liable to

The question whether a Bargadar
is a tenant or not is a question to be
each case. Certain
lar case
facts of
rly
. Subse-

BENGAL TENANCY ACT (1885), S. 4.

quently *A* and his co-sharers transf
interest to *B* and obtained from him
by which *A* agreed to cultivate the
produce to *B*. *B* brought a suit
period subsequent to the year 1929.

Held, that on facts as well as accor
ment of S. 3 (17) which applied to the
bargadar
of Small
(*M. C.*
MENDRA
NATH SARKAR. A I R. 1938 Cal 707.

——S. 4—*Under-raiyat—Status of—Power to sub-lease—Purchaser of under-*
sub lessee.

Under S. 4 of the B
tenant. He may either
a *raiyat* or under an under
not a trespasser but a tenant having the status of an under-*raiyat*. S. 4 (3) gives an indication that under-*raiyats* have power to sub-let their under-*raiyatis*
the sub lessees are tenants. Where such a sub-lessee acquired a right of occupancy to the land by a custom, he could not be ejected by a purchaser of under *raiyats* at a sale in execution. (*Nasim Ali*
Rem
MIT

——S 5 (4)—*Status of lessee—Raiyat or tenure-*

THAKUR *v.* GANESH PRASAD.
175 I C. 501=4 B R 592=10 R P. 633
A I R. 1938 Pat. 23

——S. 5 (5)—*100 standard bighas—If must*

the proper methods to apply. (*R. C. Mitter, J*) SREEMANTA NARAYAN SARKAR *v.* MAHARAJA SRISH CHANDRA NANDI. 68 C.L.J. 120.

——S. 7—*Enhancement of rent of tenures.*

BENGAL TENANCY ACT (1885), S. 22.

——S. 7 (2)—*Landlord adducing evidence to show absence of customary rent—Tenant not rebutting this evidence—Enhancement of rent—Power of Court.*

In a suit for enhancement of rent the landlord in his plaint expressly stated that there was no customary rent in the locality and adduced evidence for the purpose of

to be established that there was no customary rate of rent in the locality and as such the Court was at liberty

(1)—"*Proprietor*".
proprietor' in sub-s. (1) of S 22 includes
of a temporarily settled estate (*R.C. Mitter and Sen, JJ.*) MIDNAPORE ZAMINDARY CO.
43 C.W.N. 57=
A.I.R 1938 Cal. 804.

—*Acquisition by*
holding by

the B. T. Act
'28, should be

22 (2)—*Co-sharer landlord purchasing hold-*
ecution of rent decree—Position of.
S. 22 (2), a purchase by co sharer landlord in
even of a decree which has the effect of a

A.I.R. 1938 Cal. 452.

——Ss. 22 (3)—*Construction of Kabuliyat—Farming lease.*

BENGAL TENANCY ACT (1885), S. 22.

A company obtained a settlement from Government of a *khas* mahal The company recognized the Government as a proprietor. The
to be a ryotwari settlement
was described as farmer.
the settlement, the payme
liable to make to the G
revenue and it was further provided that in case of default in payment the Government had right to cancel the lease and to realize its dues by the procedure under Public Demands Recovery Act

Held, that the use of the word 'revenue' and the provision for realization of dues by procedure under the Public Demands Recovery Act did not signify that the relationship of landlord and tenant was not being created by the settlement. Under the settlement the company

Purchase by ijardar of occupancy holding—Effect of.

from acquiring occupancy right by purchase c
in the land of his ijara, but it did not debar
acquiring a non occupancy ryoti interest. Th
that if an ijardar purchases an occupancy

——S. 23—Tenancy for horticultural
Structures erected by tenant—Suit for
injunction by landlord dismissed as ti
Structures subsequently destroyed by fire—Transferee from tenant erecting fresh structure on same site—Landlord, if can bring fresh suit *See* LIMITATION ACT, S 28

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BENGAL TENANCY ACT (1885), S. 26-F.

decree in favour of his son were recited and stated to have been satisfied but the amount due on the mort-

(*Bartley and Nasim Ali, JJ.*) KUNJA KAMINI *v.* MANGAL CHANDRA. I.L.R. (1938) 1 Cal. 695= 42 C.W.N. 209.

——S. 26-E (1)—*Sale of tenure and occupancy holding together—Landlord's fees so far as tenure deposited—Sale of tenure confirmed and that of occupancy field set aside—Validity.*

In execution of a mortgage decree, *A* purchased and obtained possession of a tenure and an occupancy field

himself and took symbolical possession. Therefore *A*

Treasury until the next day owing to the rules of procedure, the Court cannot reject the application as time-barred. (*Henderson, J.*) MANILAL PAL *v.* GOUR

debtor entered into a compro
holder agreed to discharge
the entire liability under the d
the decree-holder was thereu

sold and not the entire decretal amount. (Aasim Ali, J) CHAND MIA v. MAHARAJA BIR VIKRAMKISHORE MANIKYA BAHADUR 42 C.W.N. 644

——S 26 F—*Instrument of transfer stating sale price as Rs. 200—Notice under S 26 C also stating same amount—Recital in body of instrument that certain mortgage debts were satisfied—debts not stated—Amount to be deposited pre-emption.*

Where the instrument of transfer issued to the landlord under S. 26-C of the B. T. Act stated the sale price as Rs. 200 and in the body of the instrument one mortgage in favour of the transferee and another mortgage decree in favour of his son were recited and stated to have been satisfied but the amount due on them was not mentioned and it appeared that

lord was not bound to deposit for pre emption anything

——S. 26-F—*Proceeding under—Minor party—Compromise entered into by guardian—Sanction of Court—If necessary—Order of Court—If can be challenged by suit—C P. Code, O. 32, R. 7.*

By virtue of S. 141, C.P. Code, O. 32, R. 7 of the Code applies to proceedings under S. 26 F
Tenancy Act and express sanction must

appellant
guardian.
MA DASI.
Cal. 736.

Objection regarding
ge, disallowed by

of the B. T. Act
he holding which
sed by the lower
on will not inter-
KALI MOHAN

67 C.L J. 5.

Right of pre-emption—Applicant, if must be immediate landlord at time of order.

The right of pre emption under S 26-F of the B T. Act depends upon the applicant being an immediate landlord of the holding not only at the time he makes his application but also at the time when an order for

(Henderson,
v. JITEN-
N. 382=
C. 181=
Cal. 351.

——S 26 F—*Sale of property in two lots—Landlord's right to pre-empt one of them.*

Where property was sold in two lots in execution of a money decree, the landlord seeking to pre-empt under S. 26-F of the B T. Act cannot be allowed to

must pre empt both the

be refused. (*S K. Ghose,*
UKMINI KANTA BARMAN
42 C.W N. 288.

——S 26-F (3
If entitled to be p
A transferee of
mortgagee of that
(3) of the B T.

——S. 26 J—*Application under—Decision, if res judicata.*

Under S. 11, C. P. Code, no question of *res judicata* arises unless there has been a suit. There can be no question of *res judicata* in connexion with summary

BENGAL TENANCY ACT (1885), S. 26-J.

balance of the transfer fee should not be by means of a suit. The section itself does not indicate whether recovery is to be by means of an application or by [illegible]

——**S. 26-J**—*Proceeding under—Decision as to nature of tenancy—Whether* res judicata.

[illegible]

is due from the transferee. The question of the status of the tenancy is not merely incidental, ancillary, or subsiduary. It is a matter which is directly in question between the parties. Consequently the decision of that question by the Court in a proceeding before it, operates as *res judicata*, in a subsequent suit between the same parties instituted in a Court of concurrent jurisdiction. The fact that in the prior proceeding the High Court in revision has expressed an opinion as to the right of the unsuccessful party to institute a suit cannot in law prevent the application of the doctrine of *res judicata*. (*Costello and Panckridge, JJ.*) KRISHNA CHANDRA v. MANIKLAL. I.L.R. (1938) 2 Cal 418 = 67 C.L.J. 363 = 42 C.W.N. 793.

——**S. 29**—*Claim of excess rent—Burden of proof.*

Proviso (1) to S. 29 only dispenses with the necessity of a contract being in writing and registered but does not affect Cls. (*b*) and (*c*) of S. 29. Although S. 29 has no application where there are excess lands which are added to the original holding and a consolidated rent is assessed upon the whole, still it is incumbent on the Court to [illegible]

[illegible] *provement not registered—Landlord's right to enhanced* [illegible]

BENGAL TENANCY ACT (1885), S. 44.

——**Ss. 30-B and 52**—*Decree against recorded tenant—Unrecognised transferee of occupancy holding—If can sue to set aside decree.*

The unrecognized transferee of a portion of an occu- [illegible] has undoubtedly a right to get a decree [illegible] inst the recorded tenant set aside on the [illegible] was vitiated by fraud or collusion, but it is not open to him to attack the decree simply on the ground that the decree is wrong in law and should not have been passed having regard to the evidence that was [illegible] which were [illegible] herjea, J.)

——**S. 38**— [illegible] *benefit of section.*

S. 38 of the B. T. Act applies only to an occupancy raiyat, and a tenant cannot invoke it to his aid unless it is clearly [illegible] tenant. [illegible] the benefi [illegible] J.) SO[illegible] LAL.

——**S. 38**—*Right to abatement—"Deterioration"—Nature of—Omission of landlord to keep irrigation system in order—Effect—Right of tenant to abatement in suit for rent—Pleadings.*

The deterioration contemplated by S. 38 of the B. T. Act is a deterioration of the soil which must be more or less of a permanent character, namely, by a deposit of sand or other specific causes, sudden or gradual. Where the productive capacity of the land depends on irrigation, the mere fact that for want of irrigation the land does not yield as much produce as it did before cannot amount to a permanent deterioration of the soil so as to entitle the tenant to an abatement of rent. If, however, [illegible] tom or [illegible] he full [illegible] n good [illegible] ven in [illegible] e done, [illegible] ust be [illegible] ted by [illegible] m for [illegible] to the [illegible] out his [illegible] *errell,* [illegible] NGH v. [illegible] 411 = [illegible] t. 514.

[illegible] *l lease* [illegible] *of ten-* [illegible]

[illegible] ext in [illegible] verbal [illegible] when [illegible] der a [illegible] ear to [illegible] raiyat [illegible] efit of [illegible] tenant who has been inducted on the zirat land as a *raiyat* by [illegible]

BENGAL TENANCY ACT (1885), S. 48.

——S 48 (as amended in 1928)—*Applicability—Rent claimed for period after new Act came into force.*

Where the period for which the
suit is after the new Act came into
the parties must be governed by S.
the bar which was imposed by the
been removed. (*Nasim Ali and Mukherjea, JJ.*)

contravention of S. 48 H of the B. T. Act, the lease itself would be void as against the superior landlord But the section does
sue for the unpaid l
Ali, JJ.) HAREND
SANA 174 I C 97

——S. 50—*Pre*
Amalgamation of holdings.

The presumption arising under S. 50 of the B T. Act is not affected by the fact of amalgamation of separate holdings into one. (*Edgley, J.*) LILABATI DASI *v.* GHITPUR GOLABARI CO., LTD. 42 C.W N 637= A I.R. 1938 Cal 481.

——S 50—*Presumption under—Right to—Plaintiff entering possession of holding by virtue of purchase—Landlord not recognising purchase and not taking rent from plaintiff—Right of latter to tack on his period of possession to that of his vendor*

The plaintiff came into possession of the disputed

that during the period of possession of the plaintiff's vendor within the 20 years immediately before the institution of the suit by the plaintiff under S. 106 of the B. T. Act, the rate of rent in respect of the holding

Even in suits which are not under the B. T. Act, the principle of S. 50 of the Act is a useful guide to the Courts in determining the nature of a tenancy, and a presumption similar to the one arising under the section may be accepted along with the other facts and circumstances

BENGAL TENANCY ACT (1885), S. 52.

of a case. (*Guha and Mitter, JJ.*) PRODYOT KUMAR *v.* RADHAKISHEN. 42 C.W.N. 304.

——S 52—Abatement of rent Grantee of Sunder-
, III of 1828—If
VENUE ASSESS-
OF 1828), S. 13.
42 C.W.N. 239.

to maintain the possession of the tenant against all lawful evictions. The landlord's duty does not extend to

principal of law whatsoever claim abatement of rent. (*R.C. Mitter, J.*) SURENDRA NATH MONDAL *v.* BHUDAR CHANDRA SAFUIX. 177 I C. 996= 67 C L J. 136=A I R 1938 Cal. 690.

——S. 52—*Claim for additional rent for additional area based both on kabuliyat and section—Landlord omitting to make measurement as provided for in kabuliyat—Claim, if barred.*

A claim for additional rent in respect of additional area based not only on the terms of the kabuliyat but upon the express provision of S. 52 of the B. T. Act, is not time barred simply because the landlord omitted to make the measurement which was provided for in the
m under S. 52 of the Act is a
kherjea, J.) KEDAR NATH BOSE
42 C W N. 994.

for rent for additional area—

t of additional
d of measure-
ing out of the
adduced by the tenant. (*Mukherjea, J.*) KEDAR NATH BOSE *v.* EMANDI MONDAL. 42 C.W.N. 994.

——S. 52—*Excess area within boundaries described in kabuliyat—Landlord's right to additional rent*

landlord was therefore entitled to get additional rent for excess area if there be any, within the original boundaries. (*S. K. Ghose and Nasim Ali, JJ.*) NANDA KISHORE LAL *v.* KHETABUDDIN AHMED. 177 I.C. 670=11 R.C 265=A.I.R. 1938 Cal. 449.

——S 52—*Scope and applicability—Test.*

What S 52 of the B. T. Act requires to be proved by measurement, is the quantity of land
the old area as well as the new ar
application of this section is, not
area— before, but was th
or assumed, for or with reference to
viously paid had been assessed. It is not necessary therefore, that the subsequent measurement must represent a real increase of area: what the section
be shown is land held in excess, and such exce
established even within the limits of the origin
daries, provided of course it is shown that the
settlement was on the basis of the supposed a
the other hand, it may happen in a particular
at the time of the assessment of the previous
area was actually ascertained and specified in the *patta* or *kabuliyat*, but the settlement was still not on the basis of the area, the rent being fixed a
sum for the entire holding, there will
any "excess" area in such a case for
rent would be payable under the section, merely because subsequent measurement shows the tenant to be holding a larger area. In other words, S. 52 may not apply even when there is a real increase of area. (*Biswas, J.*)

(2) of the B. T. Act. (*Mitter and Biswas JJ.*)

mary rent and actual rent—Claim to sum in excess of actual rent—Maintainability.

The rent of a holding is that which is paid by a tenant for the use and occupation of the land. Actual rent is the rent actually agreed upon between the parties. A tenant may be inducted on land on an agreement to

ment for the use of the land. If the amount has been definitely agreed upon that is the actual rent payable.

tenant to erect building.

The only effect of the amendment of S. 76 (2) (*f*) is

——S. 103-B—*Presumption under—Extent of.*

raise a presumption in favour of the recorded holder of his possession at some earlier date A I R 1934 Cal. 707, Foll. (*McNair, J.*) BEROJULLAH SARKAR *v.* AVATULLAH AKAND. **176 I C 706 = 11 B C. 169 = 66 C L J. 455 = A.I R 1938 Cal. 117.**

——S 104—*Assessment of land added to an estate paying revenue—Complaint of wrong inclusion of land in Diara estate—Omission to file suit—Effect of—Bengal Act (IX of 1847)*

the rent of the tenure under S. 104 of the B T. Act at rates much more than the rates which had been fixed in 1840.

Held, that the assessment was in accordance with law and not *ultra vires*. (*M. C. Ghose and Bartley, JJ.*) SATINDRA NATH CHOUDHURY *v.* HARENDRA NATH

866 —

529.

Entries

BENGAL TENANCY ACT (1885), S. 104 A.

rent and not other entries in the record of-rights is conclusive. (*R. C. Mitter and Biswas, JJ.*) SRISH

correctly settled under the Act if in settling such rent he abrogates such contractual rights and thereby exceeds

void and not binding on the tenants (*Syed Nasim Ali and Henderson, JJ*) MIDNAPORE ZEMINDARY COMPANY LTD. *v.* CHANDRA SINGH DUDHORIA.

——S 104-H—*Parties—Suit status of defendant should be recorded as occupancy raiyats—If necessary and proper parties.*

In a suit framed under S. 104-H the relief claimed must determine the question whether the under-tenants are or are not necessary parties. Where the plaintiff asks for a declaration that the status of the defendants should be altered, the under-tenants or the persons who have been recorded as occupancy raiyats of a portion of the same holding are necessary and proper parties, as the decision would not only affect the status of the defendant but would also affect the status of the under-tenants. (*Wort and Manohar Lall, JJ.*) KAMESHWAR SINGH BAHADUR *v.* BIBI FATMA.

17 Pat 150=173 I C. 6=13 R P. 383=
4 B R. 222=A.I R. 1938 Pat. 43.

——S. 104 J and H—*Effect of—Entries in record of rights—Conclusive nature of.*

LTD *v.* CHANDRA SINGH DUDHORIA. 68 C L J. 305.

BENGAL TENANCY ACT (1885), S. 111-A.

by landlord—Claim to sum in excess of and over and above the settlement rent—Maintainability.

19 Pat L T. 365=1938 P.W.N. 286=
A I R 1938 Pat 319

The trial of a suit under S. 106 of the B. T. Act cannot be arrested merely by reason of the transfer of the interest of the plaintiff pending suit. The transferee may, if he chooses, obtain leave of the Court under

litigation. (*Edgley, J.*) LILABATI DASI *v.* GHITPUR GOLABARI CO., LTD. 42 C.W N. 637=
A I R 1938 Cal 481.

——S. 106—*Suit under—Parties—Transferee of interest of tenant who was made* pro forma *defendant, not made party—Suit, if maintainable.*

The fact that in a suit under S. 106 of the B. T. Act the transferee of the interest of a tenant who was impleaded as a *pro forma* defendant was not made a party, does not render the suit non-maintainable on account of the defect of parties (*Edgley, J.*) LILABATI DASI *v.* GHITPUR GOLABARI CO , LTD. 42 C W N. 637=
A.I R. 1938 Cal. 481.

——S. 106—*Suit under—Transposition of co-sharer defendant as plaintiff after limitation—Jurisdiction of Court—C P. Code, O. 1, R. 10—Limitation Act, S. 22 (2).*

amendment—If barred.

ceased but these holdings were not recorded even as non-occupancy holdings in the Record of Rights The

Held, that as the sub-tenants did not deny ijardar's title and as the suit was under Proviso to S. 111-A, the sub-tenants were not necessary parties to the declaratory suit brought by the ijardar. (*R C. Mitter and Sen, JJ.*) MIDNAPORE ZAMINDARY CO. *v.* SECRETARY OF STATE. 43 C W.N 57=A.I R 1938 Cal. 804.

——**S 111 B and Limitation Act, Art. 120**—*Suit for correction of record of rights—Limitation—Computation—Deduction of four months—If permissible*

——**S 114**—*Zamindari estate sold under Bengal Land Revenue Sales Act—Purchaser annulling under-tenures—Liability for unpaid balance of costs of preparation of Record of Rights.*

A purchaser of a zamindari estate sold under the provisions of the Bengal Land
recovery of arrears of land
be has annulled, as he is ent
that Act, the under-tenures,
the costs of the preparation of a Record of Rights of the estate, which has been duly apportioned on the patnidars of the estate prior to his purchase of the estate and the annulment of the under-tenures. When the purchaser, under S 37, of the entire estate elects to avoid and annul under-tenures they cease to exist and when they have ceased to exist, the charge imposed on them in respect of the costs also ceases to exist And R. 414 of the Bengal Survey and Settlement Manual does not apply as it does not purport to deal with a case of the annulment of under-tenures but deals only with death, transfer or abandonment. A
construed as including an
94=167 I.C 741. Reverse
RANJAN ROY *v.* SECRET
19 Pat L T 861=

——**S 115 C**—*Protec*
appeal.
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Act.
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——S 116—Applicability— Term of years —Verbal lease for one year *See* B.T. ACT, Ss 44 (*c*) AND 116 A I R. 1938 Pat 38

——**S. 144**—*One suit for rent in respect of two plots—One of them alone within jurisdiction of Court—Decree in respect of both plots—Validity.*

Where one suit for rent claiming two decrees in respect of two plots is instituted as contemplated by S. 144 of the B. T. Act and one of the plots alone is within the jurisdiction of the Court but a decree is passed in respect of both the plots, the decree in so far as it relates to the plot within the jurisdiction of the

Court is valid but the decree relating to the other plot is liable to be set aside. (*Mukherjea, J.*) KUMAR
ROY *v.* DHARMADAS BHATTACHAR-
. 22=10 R C. 685=42 C.W.N. 375.

—*Interpretation.*
uses of S. 146-A of the B T. Act cannot be read disjunctively. (*Jack, J.*) CHANDRAKANTA BAL MUNSHI *v* SAHARALI SHEIKH. 67 C L.J. 467=A I R. 1938 Cal 758.

——**S. 146 A (3)**—*Rent suit—Co-sharer tenant coming under any of four classes—If should be impleaded.*

Under S. 146-A (3), B. T. Act, the entire body of co-sharer tenants is to include the names of every one of the four classes enumerated therein and the landlord in order to get a proper rent decree must implead as defendants every co sharer tenant who comes under the
In other words,
ny of the four
t suit then the
(*M. C. Ghose,*
MISRA *v.* PRAN
2 C W.N. 755=
. 1938 Cal 531.

——**S. 146 A (3), Cl. (iii) and (iv)**—*Portion of holding purchased by plaintiff—Recognition of purchase by all co-sharer landlords except one—Rent suit by latter against original tenants without impleading plaintiff—Decree and sale—What passes—Plaintiff's*

purchase after the amendment. All the co-sharer landlords except defendant No. 1 recognised the plaintiff, and defendant No. 2, one of the co-sharer landlords even accepted the transfer fees paid in respect of the auction-purchase. Defendant No. 1 brought a suit for rent against all the original tenants, impleading his co-sharer landlords as defendants. The plaintiff was not made a party to this suit. Defendant No. 2, however, subsequently joined as co-plaintiff. The rent suit was decreed and defendants Nos 1 and 2 purchased the holding in execution. The plaintiff sued for a declaration

——**S. 148**—*Succession to tenancy not notified—Landlord getting credible information as to who are all heirs—Decree for rent obtained against other persons—If rent decree.*

It is, no doubt, the duty of the persons succeeding by inheritance to a permanent tenure to notify the succession and it is not the duty of the superior landlord to find out who all the heirs of a deceased
are. But where the landlord prior to the institu
the suit for rent or during its pendency
formation with regard to succession, it is not

to ignore that information and proceed with the suit for rent as against some other person and thereafter to say that the decree which he has obtained as against that person is a decree which should be treated as a decree for rent. (*Mukherji, J.*) ALI BAKSHA BEPARI *v.* CHITTA RANJAN GUHA. 42 C.W.N. 334

——S 148 A (9)—*Scope—Suit for rent by co-sharer landlord impleading others as defendants—If prevents latter from further prosecuting certificate proceedings previously started—Latter withdrawing from certificate proceedings and joining as co-plaintiffs in suit—Right to exclude time taken by such proceedings—Limitation Act, S. 14.*

ing further with the certificate proceedings previously started by them for recovery of their share of rent for the same period. ... draw from the cer ... co-plaintiffs in the suit ... Limitation Act to e ... for their claim by ex ... they prosecuted those ... *C. Mitter, JJ*) H ... PRASAD RAY CHAUD ... 177

——S. 153—*Distri* ... *appeal lies—Appeal—* ...

Where the trial Court had to consider and decide a question relating to the title to the land in suit, bu ... question did not fall for decision between parties ... conflicting claims to the land in suit, no appeal ... the District Judge from the decision of the trial ... But if the District Judge decides an appeal, his ... will be without jurisdiction and yet under S. ... no appeal will lie against such decree. But the Court can under such circumstances vary the decree in revision.

...ity.

After a sale of a holding in execution of a rent decree and within thirty days of the sale the decree-holder and the judgment debtor certified to the Court that the decree had been satisfied and fully paid, and the judgment debtor deposited five per cent. of the purchase-money for payment to the auction-purchaser and prayed that the sale be set aside.

Held, that the provisions of S. 174, B.T. Act, had been substantially complied with and the sale should be set aside, it was not necessary for the judgment debtor to deposit the amount of the decretal debt in Court for the benefit of the decree-holder when the decree-holder himself had certified satisfaction of the decree. (*Court-*

be made before the appeal could be entertained at all. Consequently an appeal, though filed on the last date of ...

cation to set aside sale—Appeal.

... T. ... D ... 4.

——S. 174 (5)—*Order under S. 173 (3)—Right of appeal.*

... applies to applications ... ot apply to applications ... sequently, there is no ... under S. 173 (3). (*S.* ... ASHUTOSH MANDAL ... C. 761 = 11 R.C. 171 = ... C.W.N. 585 = A.I.R. 1938 Cal. 446.

... *ope—Zamindar granting mokarrari* ... diara *lands at consolidated rental—*

tween the parties, *i.e.*, substituting two tenancies in the

place of one This can only be done by the mutual consent of the landlord and tenant. S. 191 contemplates that a lease or contract (provided it is made after the passing of the B. T. Act) may be superseded as therein stated, only where the area comprised in the tenure or holding to which the contract relates is situate

by landlord as auction-purchaser.

Dispossession by the landlords as auction-purchasers does come under the provisions of the special law of

of mortgage decree against co-sharer tenants.

Where a tenant in execution of a mortgage decree against his co shar
land, he represents
sessed by the lan
would apply. A I
J.) AMIRUDDIN
175 I.C. 697=1

——Sch. III, *setting up servant as tenant and dispossessing raiyat through him—Suit by raiyat to recover possession—Limitation.*

Mere allegations or suggestions in the pleadings are

raiyat, the dispossession is by landlord and a suit by the raiyat to recover possession is governed by Art, 3. (*Agarwala, J.*) BINDESHWARI RAI *v.* RAM PALAK SINGH. 175 I C. 91=4 B R. 521=10 R P 580= 1938 P.W.N. 741=A.I R. 1938 Pat 181.

——Chap. XIV—*Rent decree—Transferee of putni tenure not recognised by landlord—Suit for rent against putnidar—On objection by latter, transferee impleaded as party defendant—Decree obtained against putnidar*

against the original putnidar alone, the decree can be

cution is three years from the date of the decree. But if in the course of that period a sale has taken place, and subsequently that sale has been set aside, the inter-

vening period is not to be counted, if he then desires to go on with the execution, provided there is no further break in the continuity of the execution proceedings due to his own inaction. Otherwise, the total period of time within which the decree-holder must set in motion proceedings for enforcing his decree is a period of three

ILLAGE CHOWKIDARI ACT (VI
howkidari jagir—Liability to resumption
See GRANT—CHOWKIDARI JAGIR.
17 Pat 315.

BENGAL VILLAGE SELF-GOVERNMENT (V OF 1919), Ss. 71 and 93—*Conviction by Bench—Revision—Jurisdiction of High Court—er of case pending before such Bench—Power of ourt.*

High Court has no jurisdiction to interfere in under S. 439, Cr. P. Code, with an order of conviction by a Union Bench. Nor has it power to transfer a criminal case pending before such Bench.

BENGAL WAKF ACT (XIII OF 1934), Ss 70 and 72—*Petitions by mutwalli under O. 21, R. 58, C. P. Code, dismissed for default—Right of commissioner* ... *m Court.*

58, C. P. Code, were dismissed
s entitled to file a similar petition of claim on receipt of notice under S. 70 of the Bengal Wakf Act, and he is entitled to have his petition heard on the merits. (*S. K. Ghose and Nasim Ali, JJ*) COMMISSIONER OF WAKFS, BENGAL *v.* GAGAN CHANDRA DAS.
I.L R. (1938) 2 Cal 187=42 C W.N. 616.

——S. 71—*Property not admitted to be wakf—Right of Commissioner to intervene*

Per *Nasim Ali, J.*:—S. 71 of the Bengal Wakfs Act

BERAR ALIENATED VILLAGES TENANCY
Limits.
lated by S. 22
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due for more
NDRA GOVIND
173 I.C. 800=
10 R N. 325=A.I R 1938 Nag 202.

——S. 76 (3)—*Suit for arrears of rent due* ... *alienation tenant—Limitation.*

BERAR INAM RULES (1859).

According to S. 76 (3) of the Berar Alienated Villages Tenancy Law, the period of limitation for a suit by a landlord for an arrear of rent due by an ante alienation tenant is three years and this is so notwithstanding anything contained in Arts. 120 and 132 of the Limitation Act. (*Pollock, J.*) RAMCHANDRA GOVIND *v.* MISHRIMAL CHANDANMAL. 173 I C. 800 = 10 R N. 325 = A I.R. 1938 Nag. 202.

BERAR INAM RULES (1859)—*Scope of—Enfranchisement following from grant—Rules, if to be applied*

The Inam rules lay down the general principles of succession and enfranchisement, and if the act of enfranchisement follows from the terms of the Inam grant itself, it is not necessary that it should be brought about by the exact operation of the rules. (*Roughton, F. C.*) MIR AHSANALLI *v* MST. HUSSAINBI 1938 N L.J. 248.

——**R IV**—*Inam—Service grant—Succession to—Sister and Father's brother's son—Preferential right—Watan belonging to family—Succession to.*

A person who is disqualified by reason of sex from performing a particular service cannot be considered a

which belongs to the family. A watan is not the same thing as an Inam. (*Roughton, F.C.*) HARNABAI *v.* GANGADHAR 1938 N L J. 22.

——**Rr V, XI & XV**—*Applicability and scope—Inam grant—*

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and Puranik, J.) LAXMAN *v.*

I.L R. 1938 Nag. 1

——**Rr. V (3) and (5)**—*U*

grant—If precludes its enfranch

The use of the words 'as the Jahgir' in the inam

BERAR PATELS AND PATWARIS LAW (1900).

S. 6.

——**R. VI, Cl (4)**—*Interpretation—Grant in return for services—Services ceasing to be rendered—Continuing of service grant by Inam commissioner—Nature of estate granted to inamdar.*

Where the original grant of lands was in return for certain services which had now ceased to be rendered and the service grant was continued in perpetuity on the recommendation of the Inam commissioner on payment of 'one half rates of assessment,' it was *held* on an interpretation of Cl. 4 of R. 6 of the Berar Inam Rules

—*Powers of Deputy Commissioner—Reduction of nazul ground rent.*

S. 102 of the Berar Land Revenue Code only gives the Deputy Commissioner, powers to interfere to correct an error due to a mistake in survey or arithmetical calculation. Reduction of *nazul* ground rent cannot come under the section. (*Roughton, F.C.*) UMAR HAJI, *In re* 1938 N.L J. 316.

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A.I.R. 1938 Nag 144

——**S. 129**—*Persons acquiring right of easement under ordinary law—If need apply to Deputy Commissioner.*

S. 129 of the Berar Land Revenue Code can never

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the T. P. Act.

patwari"—Meaning of—Rate fixed by agreement—*Power of Deputy Commissioner to fix emo*

The words ' emoluments of a patwari"

S. 6 (3) of the Patels and Patwaris Law c

preted as meaning the emoluments at the rate fixed by the Deputy Commissioner under the proviso (*b*) after the patwari has intimated that he no longer abides by the agreed rate. When the rate of emoluments has once been fixed by agreement between the Jagirdar and the Patwari, the Deputy Commissioner cannot fix emoluments under S. 6 (3) S. 6 (3) does not further come into operation unless there has been a withholding of payment by the proprietors, and when the withholding is condoned by

him substitute.

under S. 8 of the Patels and Patwaris Law, of a malik who is un-

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license giving him the right to collect the tolls. There was only a resolution of the Municipality, but no contract or document under seal as required by S. 64 of the

defendant.

Held, (1) that there was no contract binding under the Act, and the contract not being in accordance with S. 64 could not be sued upon ; (2) that if the Municipality be held entitled to sue on the basis of an implied contract, Art. 115 of the Limitation Act applied to the case, and the suit brought more than three years after the breach was barred. (*Wort and Varma, JJ.*)

agreement" are to be interpreted. Then the commissioners are to decide at a meeting what tests shall be applied. (*James and Dhavle, JJ*) CHAIRMAN, ARRAH MU

16 Pat.

——Ss 1

liability

and Orissa

al occupation

an occupier

l, the owner

10 R.P. 626 = 19 Pat. L T. 405 = 1938 P.W N. 444 = A.I R 1938 Pat 391.

111—Applicability — Latrine tax—Claim ner of unoccupied holding—Sustainability. AND ORISSA MUNICIPAL ACT, SS. 100

1938 P.W N. 444.

——S. 111—*Holding unoccupied — Owner — If*

nd 119—*Objection as to liability to observance of procedure under S.* 116—

—*Scope of.*

Where an assessee disputed his occupation of any holding or his liability to be assessed, it is necessary under S. 116 of the Act that he should apply to the

assessment or exemp-

vides that no objection

in any other manner

(*James and Dhavle,*

JJ) CHAIRMAN, ARRAH MUNICIPALITY *v.* RAMKUMAR CHOUDHURY. **16 Pat 662 = 1938 P.W.N 33 = 19 Pat.L T. 91 = 174 I C. 855 = 4 B R 488 = 10 R P. 558 = A.I.R. 1938 Pat. 177.**

——S. 119—Bar under—Scope of. *See* BIHAR AND ORISSA MUNICIPAL ACT, SS. 116 AND 119.

16 Pat. 6

BERAR INAM RULES (1859).

According to S. 76 (3) of the Berar Alienated Villages Tenancy Law, the period of limitation for a suit by

BERAR INAM RULES (1859)—*Scope of—Enfranchisement following from grant—Rules, if to be applied.*

The Inam rules lay down the general principles of succession and enfranchisement, and if the act of enfranchisement follows from the terms of the Inam grant itself, it is not necessary that it should be brought about by the exact operation of the rules. (*Roughton, F. C.*) MIR AHSANALLI *v.* MST. HUSSAINBI. 1938 N L J. 248.

———R IV—*Inam—Service grant—Succession to—Sister and Father's brother's son—Preferential right—Watan belonging to family—Succession to.*

A person who is disqualified by reason of sex from performing a particular service cannot be considered a

which belongs to the family. A watan is not the same thing as an Inam. (*Roughton, F.C.*) HARNABAI *v.* GANGADHAR. 1938 N.L J. 22.

———Rr V, XI & XV—*Applicability and scope—Inam grant—Representative of inamdar not applying to Inam*

rent—

A

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free-hold estate as provided by

and Puranik, J.) LAXMAN *v.*

I.L R. 1938 Nag. 1

———Rr. V (3) and (5)—*U.*

grant—If precludes its enfranch

The use of the words 'as the Jahgir' in the inam grant does not preclude the inam from being enfranchised. (*Roughton, F. C.*) MIR AHSANALLI *v.* MST. HUSSAINBI. 1938 N.L.J. 248.

———Rr. VI (2) and V (2)—*Applicability—Inam for the 'service of Deshmukh and maintenance'.*

The words in a grant '

tenance' suggest that the

a mere maintenance gra

Berar Inam Rules and by reason of Cl. (2) of R. VI it is governed by Cl. (2) of R. V, except in so far as that clause is inconsistent with R. VI. (*Roughton F. C.*) MT. RENUKABAI, *In re.* 1938 N.L J. 258.

BERAR PATELS AND PATWARIS LAW (1900), S. 6

———R. VI, Cl.(4)—*Interpretation—Grant in return for services—Services ceasing to be rendered—Continu-*

Inam commissioner—Nature of

tar.

grant of lands was in return for

had now ceased to be rendered

as continued in perpetuity on the

Inam commissioner on payment

of 'one half rates of assessment,' it was *held* on an interpretation of Cl. 4 of R. 6 of the Berar Inam Rules which governed the case that the grantee obtained a free hold estate, (*Pollock, J.*) DIGAMBAR *v.* KISHANDAS GOVERDHANDAS. 174 I. C 84=10 R N. 340= A I R. 1938 Nag. 220.

BERAR LAND REVENUE CODE (1928), S 102

—*Powers of Deputy Commissioner—Reduction of nazul ground rent.*

S. 102 of the Berar Land Revenue Code only gives the Deputy Commissioner, powers to interfere to correct an error due to a mistake in survey or arithmetical calculation. Reduction of *nazul* ground rent cannot come under the section. (*Roughton, F.C.*) UMAR HAJI, *In re.* 1938 N.L J. 316.

t of way claimed

partly through fields

rely on a right of

dinary civil law.

APPA KOMTI *v.*

56=10 R N. 291=

A.I R. 1938 Nag 144.

———S. 129—*Persons acquiring right of easement under ordinary law—If need apply to Deputy Commissioner.*

S. 129 of the Berar Land Revenue Code can never

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and

29.

A.I.R. 1938 Nag 144.

S 155—*Absence of Jurisdiction to sell—Ques-*

the T. P. Act.

The word 'sale' in S. 176 of the Berar Land Revenue Code is not to be construed in the narrow sense in which it is used in the T. P. Act. As such it includes an oral sale. (*Bose, J.*) JAINARAYAN *v.* BALWANT. 1938 N L.J. 379.

The amendment of S. 6 (3) of the Berar Patels and Patwaris Law was an alteration by way of limitation of the period within which application for assistance could be made to the Revenue Court. The right under S. 6

BIHAR TENANCY ACT (1885), S. 148

KUNJ BEHARI THAKUR. 17 Pat. 218=
4 B.R. 356=1

——S. 148—*Sco*
for rent ·Defect in fr
all plots in holding—Effect—Right to decree—Admission by defendant—Effect of.

A suit for arrears of rent is a suit of a double nature It is ordinarily a suit to enforce the charge upon the holding which is created by S. 65 of the Bihar Tenancy Act, but a decree enforcing this charge can only be made when the plaint is framed so as to exactly comply with

possession of the area which he claims and there has been no ejectment by the landlord, the latter ought not

forced upon the tenant, and if it appears that he has not been willing to give a quittance in the manner required by law, he should not be allowed any damages

11 B.P. 171=1938 P.W.N. 379=
19 Pat L T. 325=A.I.R. 1938 Pat. 306 (S.B.).

——S. 148—*Scope—Suit for rent of part of holding—Maintainability—Money decree—Power of Court to pass.*

A suit for rent in respect of a part of a holding is not maintainable at all, nor can the Court pass a
decree even. (*Agarwala, J.*) DWARKA
SINGH *v.* BABU LAL SINGH. 174 I.(
10 B.P. 530=1938 P.W.'.
18 Pat.L.T. 1021=A.I.R. 1938 Pat 124.

——S. 148 (h)—*Applicability—Decree for arrears of rent in favour of landlord—Latter assigning interest in zamindari to superior landlord—Subsequent assignment of decree to another—Application for execution by assignee of decree—Competency.*

Rowland, JJ.) KEDAR NATH *v.* SAMRU KAZI
17 Pat. 189=173 I.C. 609=4 B.R. 312 (1)=

BIHAR TENANCY ACT (1885), S. 171

10 R.P. 426=18 Pat. L T. 1017=

CHANDRA MAHTON *v.* RAM GULAM MAHTON.
177 I.C. 529=4 B.R. 826=11 B.P. 160=
A.I.R. 1938 Pat. 305.

——S. 153—*Appeal—Conflicting claims—Suit for rent below Rs. 50 against A—A alleging that B was in possession of lands—B joined and allowed to contest—*

the tenant and comes under one of the exceptions mention in S. 153 of the Bihar Tenancy Act and a

——S. 153—*Question of title—Suit for rent valued below Rs. 100—Decision by District Judge holding that right to collect rent alleged not made out—Second appeal.*

Certain co-sharer landlords instituted rent suits against the tenants for a certain percentage of the rent on the ground that by an arrangement their co sharer landlords were entitled to realise the rent to the extent claimed by them. The suit was valued below Rs. 100 and the co sharers of the plaintiffs were not impleaded as parties to the suit. The tenants-defendants did not claim any interest in the land adverse to the plaintiffs

decided between the parties.

Held, that
as S. 153 of
appeal (*Kha*
THAKUR *v.* I

——S 171—*Applicability — Rent decree against*
force of S. 26-N of
—If ceases to be rent
mortgagee to benefit of

d as a suit for arrears of
Act is instituted and a
Act as a rent decree is
N of the amended Act
igning of the decree and
decree anything other
hat under S. 26-N of the
nust be deemed to have
given his consent to transfers made prior to 1923, and to the distribution of rent upon which the transferor and

BIHAR AND ORISSA MUN. ACT (1922), S. 180.

——Ss 180 and 363—Limitation—Municipal license fee—Suit for—Limitation applicable. *See* LIMITATION ACT, ARTS. 115 AND 20.

A.I.R. 1938 Pat. 192.

——S 182 (5)—*Road side lands—*[illegible] *Municipality to lease—Lease for five year of renewal for erecting petrol pump—Co*[illegible]

The powers conferred on Municipalities roadside lands are very limited. Roads lands) are only vested in the Municipality lease of such land by the Municipality fo an option of renewal and authorizing the e petrol pump on roadside land is beyond the powers of the Municipality to grant in exercise of its powers under the Act It is not competent to the Municipality under the Act and the bye-laws under S. 185 (*b*) to make an income by putting up substantial buildings on roadside lands through lessees while largely destroyi[illegible] of the abutting properties of private owne[illegible] *J.*) DWARKA PRASAD SINHA *v.* P[illegible] MUNICIPALITY. 177 I C 315=[illegible]

11 R P. 142=19 Pat [illegible]

A I R 1938 Pat. 4[illegible]

BIHAR AND ORISSA [illegible] RECOVERY ACT (IV OF 1[illegible]

—Service of—Validity—For[illegible] *server—If material.*

The validity of the service o[illegible] the Public Demands Recovery Act d[illegible] depend upon the form of the process-service [illegible]

[illegible] according to the statutory rules unde[illegible] Act. (*Courtney-Terrell, C.J. and J.*[illegible] KESHWAR SINGH *v.* KESHO PRASAD SINHA.

1938 P.W N. 202=19 Pat L T. 645=A I.R 1938 Pat. 622.

——Ss. 24 and 25—Order re[illegible] sale by certificate officer—Suit by [illegible] possession—Limitation applicable. [illegible] ACT, ART. 11.

——S 25—*Scope—Certificate—and finality of—Decision on claim be challenged or ignored in suit raised and raised in suit—If can be abandoned in appeal.*

The Certificate (Public Demands Recovery) Act has a procedure of its own according to which as soon as a certificate is signed by the certificate officer, it becomes a decree, and then may follow certain enquiries as a result of which the decree may either be cancelled, varied or may be proceeded with. The decree may be varied or cancelled under S. 10 of the Act on objection [illegible]

BIHAR MONEY-LENDERS' ACT (1938), S. 16.

11 R P. 43=1938 P.W.N. 329=19 Pat L T. 328=A I.R. 1938 Pat. 315 (S.B.).

——Sch. II, R. 25—*Notice under— Service on debtor's elder brother—Validity—Suit to set aside sale* [illegible]

[illegible] or was informed of such service (*Courtney Terrell, C.J. and James, J.*) RAM KESHWAR SINGH *v.* KESHO PRASAD SINHA. 1938 P.W.N. 202=19 Pat.L T. 645=A.I.R 1938 Pat. 622.

BIHAR AND ORISSA SUGAR CANE RULES [illegible] *Object and scope of—* [illegible] *nfringement of rule*

[illegible] distinctly makes the purchasing agent liable if it is found that the weighment clerk [illegible]

[illegible]

[illegible] cannot be absolved from liability under R. 15. (*Varma, J.*) BALA BUX *v.* EMPEROR. 176 I C 558=39 Cr L.J. 732=11 R P. 85=4 B R 734=19 Pat L T 395=A I R 1938 Pat. 366.

[illegible] OF 1938),

[illegible] rs' Act no [illegible] before the [illegible] not be taken [illegible] re did not intend to interfere with those litigations which were pending when the Act came into force and certainly not those which had already culminated in a decree, whether of the trial court or of the appellate Court (*Wort, A. C. J. and Manohar Lall, J.*) BIBI SHAIMA *v.* BANK OF BIHAR, LTD. 178 I C. 383=1938 P.W.N. 603=19 Pat. L T. 585=A I.R. 1938 Pat. 484.

——S 16—*Applicability—If confined to executions* [illegible]

——S. 16—*Scope of void on the ground of repugnancy to O. 21, R. 66, C.P. Code (Patna Amendment)—Government of India Act, 1935, S. 107.*

The effect of S. 107 (1) of the Government of India Act, 1935 [illegible] any law [illegible] concurrer[illegible] existing [illegible] repugnan[illegible] or of His Majesty is given as laid down in sub-s. (2) of S. 107. O 21, R. 66, C P. Code, as amended by the Patna High Court is an existing Indian law within the meaning of S. 107 of the Government of India Act, while O. 21, R. 66, as amended, provides that the Court [illegible]

enjoins the Court to estimate the value and mention it in the sale proclamation and to vouch for the absolute [illegible]

v. HARIHAR GIR. 178 I.C. 219=D B [illegible]
19 Pat.L.T. 760=1938 P.W N. 765.

BIHAR TENANCY ACT (VIII OF 1885)—*Occupancy raiyat—Acquisition of rights of—Person in possession recognised as tenant by receiver of estate—Payment of rent to receiver—Effect of—Receiver—If landlord.*

A receiver in judicial possession of an estate by the implicit consent of the parties under the orders of the Court must be treated as the landlord for the time being. When the receiver acting *bona fi*[illegible] person in possession as tenant, doing so course of management and receives rent over seven years, the latter acquires righ[illegible] pancy *raiyat* under the Bihar Tenan[illegible] showing continuous and unbroken pos[illegible] statutory period. It is not open to the [illegible] eject such tenant by pleading that the [illegible] enure only so long as the receiver continues to manage the estate. (*Fazl Ali and Manohar Lall, JJ.*) MAHABIR DAS *v.* UDIT NARAIN VARMA.
19 Pat.L.T. 570=A.I R. 1938 Pat. 613.

——**Ss 26 E and 26 F**—*Scope—Duty of Collector under—Enquiry—Scope of—Power to refuse to accept tender of transfer-fee.*

There is no provision in the Bihar Tenancy Act which authorises the Collector to refuse to accept a deposit of the landlord's transfer fee properly tendered to

[illegible] MAHADEO JHA *v.* JOGESH-[illegible]
[illegible] N 135.
[illegible] cope and [illegible] —Confirmation in ignorance of—Legality—Non-deposit of amount and non filing of notice—If renders confirmation illegal. *See* C.P. CODE, S. 151 1938 P.W.N 192.

——(**as amended in 1934**), **S. 26 N**—Scope and [illegible] coming [illegible] ended [illegible] *See* [illegible] . 654.
[illegible] ective *effect—Transfer of part of holding—Suit by landlord more than 10 years after against recorded tenant alone—Decree and execution sale—Transferee's title—If affected.*

Section 26 N of the Bihar Tenancy Act is retrospec[illegible] d the object of the section is to quiet titles which [illegible] ore than ten years old, and to ensure that if [illegible] those ten years the transferee has not been [illegible] l, he shall have the right to remain on the land. [illegible] 13 there was a transfer of a part of a holding to plaintiff, which transfer, according to the plaintiff, was recognized by the landlord. In 1931, the landlord [illegible]

to that action. (*Wort and Varma, JJ.*) THAKUR RAI *v.* ISSARDYAL PARSHAD. 17 Pat. 333=
A.I R. 1938 Pat. 559.

——(**as amended in 1934**), **S 26 O**—*Scope and effect of—Retrospective effect—Transfer without consent—Action for ejectment by landlord—Deposit of landlord's fee with Collector and grant of receipt by latter—Effect—Consent of landlord—If deemed to be given*

S. 26-O of the Bihar Tenancy Act as amended in [illegible]

to the transfer must, under S. 26 O (3), be *prima facie* be deemed to have been given from the date on which the receipt is granted, with the result that the landlord's action for ejectment must fail. (*Agarwala, J.*) MAHADEO JHA *v.* JOGESHWAR THAKUR.
1938 P.W.N. 135.

——**S 29**—*Scope—Occupancy tenant—Kabuliat regarding land occupied by him together with new land at enhanced rent, to be doubled after certain period—Effect of.*

BIHAR TENANCY ACT (1885), S. 29.

after the period clearly contravened, S. 29. (*Wort and Rowland, JJ.*) RAJNITI PRASAD SINGH *v.* RAMUD GAR. 174 I C. 367 = 4 B R. 437 = 19 Pat L.T. 380 = 10 R P. 503 =

Failure to prove contract—If bar to relief.

It has always been held to be the law that a tenant, whether he be an occupancy *raiyat* or otherwise, is entitled to an abatement of rent if the whole or part of the land held by him is diluviated. Ss. 38 and 52 of the Bihar Tenancy Act make this clear, so far as Bihar is concerned. S. 52 is wider than S. 38 in terms, the latter section being applicable to the case of a tenure-holder. Lands in Sonthal Parganas are no exception to this rule The fact that the tenants fa prove a contract to that effect on whic not in any way prevent their getting they are entitled under the law, though their claim on the contract and not c (*Wort and Agarwala, JJ.*) FOUZ DHANA KUMARI DEVI 17 Pat. 530 = 19 Pat L T 658 = A.I R 1938 Pat. 597.

——(as amended in 1934), S. 50 (2)—*Presumption under—When arises*

S 50 (2) of the Bihar Tenancy Act only provides for the presumption that land is held at a uniform rent since the permanent settlement from pr has not been changed during the 20 ye before the institution of a suit 'until shown.' Where the rent was changed

subject to arrears of rent subsequent to suit but anterior to sale—Liability for such arrears—Landlord's right to proceed against tenant—Landlord purchaser and stranger purchaser—Distinction.

between the position of a third party purchaser who purchases subject to the encumbrance and that of the decree-holder landlord who himself purchases under like circumstances. (*Wort, C.J. and Varma and Manohar Lall, JJ.*) NRIPENDRA NATH CHATTERJEE *v.* KULDIP MISRA 178 I C. 10 = 5 B R 68 = 19 Pat.L.T 723 = 1938 P.W N 720 =

——S.
subdivision
landlord—
rights—E.
A recog
separate h

BIHAR TENANCY ACT (1885), S. 116.

would be binding upon the landlord when the *thiccadar* has acted in good faith and in the ordinary course of business. Where the action of the *thiccadar* has been absolutely *bona fide*, that binds the landlord and it is

——Ss. 105 and 109—*Scope—Application for settlement of fair rent withdrawn—Subsequent suit on same matter—Bar of.*

The withdrawal of an application under S. 105 for settlement of fair rent of kabil lagan land debars the Civil Court from entertaining a subsequent suit on the same matter. S. 109 is a bar to such a suit. Such a suit is also barred by limitation when the defendants having denied in the case under S. 105 the plaintiff's

——S. 116—*Construction—Lease for "a term of years"—Meaning of—If to be one for at least two years.*

The words "a term of years" in S. 116 of the Bihar Tenancy Act are merely a classificatory term and mean nothing more than any definite term, any definite term of time may be measured in years though not

period to come to an end more. The words "a term d to mean that the term east two years (*Courtney-* UMASHANKAR PRASAD 17 Pat. 218 = 4 B R 506 = 1938 I W.N. 254 = 173 I C. 904 = 10 R.P. 461 = 19 Pat L T. 180 = A.I.R. 1938 Pat. 299

——S. 116—*"Lease from year to year"—Meaning of —Zerait land—Lease for one year only ending on fixed to year—Tenant not delivering l—Status of—Liability to ejectcy rights—Maintainability.*

rtain is not the same as a lease re the former expression is used, akes any steps or not, the tenant When his lease comes to an end whereas when the latter expression is used, the tenant has the right to stay for a year certain, and if he shall not receive notice from the landlord to quit his tenancy at the end of the year certain, then his tenancy shall extend for another period of one year. The expression "from year to year" does not therefore cover the case of a lease for a year certain. A tenant to whom zerait land ding on a fixed on that date, as that land, and if , he becomes a me. He cannot (*Courtney Ter-* KAR PRASAD *v.*

BIHAR TENANCY ACT (1885), S. 148.

KUNJ BEHARI THAKUR. 17 Pat. 218 = 4 B.R. 356 = 1938 P.W.N. 254 = 173 I.C. 904 = 10 R.P. 461 = 19 Pat.L.T. 180 = A.I.R. 1938 Pat. 299.

——S. 148—*Scope —Non-compliance—Effect—Suit for rent -Defect in frame of plaint—Omission to mention all plots in holding—Effect—Right to decree—Admission by defendant—Effect of.*

A suit for arrears of rent is a suit of a double nature. It is ordinarily a suit to enforce the charge upon the

sarily fail because a decree cannot be made enforcing the charge in such a manner as to entitle the purchaser at the execution sale to annul all incumbrances. The suit being also one to enforce the personal liability of the tenant to pay a sum of money to the landlord, a decree enforcing this personal liability may be made even

especially when the latter admits that an amount of rent is due from him to the landlord. When the tenant is in possession of the area which he claims and there has been no ejectment by the landlord, the latter ought not

forced upon the tenant, and if it appears that he has not been willing to give a quittance in required by law, he should not be allowed a or interest on his claim. (*Courtney Terrell*

19 Pat L.T. 325 = A.I.R. 1938 Pat. 306 (S.B.).

——S. 148—*Scope—Suit for rent of part of holding—Maintainability—Money decree—Power of Court to pass*

A suit for rent in respect of a part of a maintainable at all, nor can the Court decree even (*Agarwala, J.*) DWA SINGH *v.* BABU LAL SINGH 10 R.P. 530 = 1938 P.W.N. 62 = 18 Pat L.T. 1021 = A.I.R. 1938 Pat. 124

——S. 148 (h)—*Applicability—Decree for arrears of rent in favour of landlord—Latter assigning interest in zamindari to superior landlord—Subsequent assignment of decree to another—Application for execution by assignee of decree—Competency.*

An assignee of a decree for arrears of rent who has

zamindari to the superior landlord and then assigns the decree for rent to another, S. 148 (*h*) of the Bihar

BIHAR TENANCY ACT (1885), S. 171.

10 R.P. 426 = 18 Pat. L.T. 1017 = A.I.R. 1938 Pat. 95.

——S. 148-A—*Rent suit for part of holding—Maintainability—Money decree—If may be passed*

A suit for rent with regard to a part of holding is not maintainable. In such suit the landlord is not entitled even to a money-decree. (*Wort, J.*) RAM CHANDRA MAHTON *v.* RAM GULAM MAHTON. 177 I.C. 529 = 4 B.R. 826 = 11 R.P. 160 = A.I.R. 1938 Pat. 305.

——S. 153—*Appeal—Conflicting claims—Suit for alleging that B was in allowed to contest—*

A landlord brought a suit for rent against *A* as tenant and the rent claimed was below Rs. 50. *A* alleged that suit lands were in possession of *B*. *B* was joined as party and allowed to contest the suit.

Held, that the appeal lay to the District Judge and also second appeal to the High Court, as there was con- lon of conflicting claims of *A* *J.*) BIKRAM RAJ *v.* PALAK 4 B.R. 219 = 10 R.P. 380 = A.I.R. 1938 Pat 37.

the tenant and comes under one of the exceptions mention in S. 153 of the Bihar Tenancy Act and a *hatterji, J.*) SHIVA 175 I.C. 61 = A.I.R. 1938 Pat 379.

for rent valued dge holding that made out—Second

Certain co sharer landlords instituted rent suits against the tenants for a certain percentage of the rent on the ground that by an arrangement their co sharer landlords were entitled to realise the rent to the extent claimed by them. The suit was valued below Rs. 100 and the co-sharers of the plaintiffs were not impleaded as parties to the suit. The tenants-defen-

separate collection of rent even to the extent of their shares and dismissed the suit. No question of title was decided between the parties.

Held, that no second appeal lay to the High Court, as S. 153 of the Bihar Tenancy Act barred a second appeal. (*Khaja Mohammad Noor, J.*) JAGDAM THAKUR *v.* HIRA THAKUR. 19 Pat L.T. 212.

——S. 171—*Applicability — Rent decree against tenant—Subsequent coming into force of S. 26-N of Act—Effect—Decree—If ceases to be rent Execution—Right of mortgagee to benefit of*

e a suit properly framed as a suit for arrears of rent under the Bihar Tenancy Act is instituted and a decree executable under the Act as a rent decree is ided Act ecree and ng other N of the to hav 923.

BIHAR TENANCY ACT (1885), S. 171.

the transferee had agreed, and that thereby the decree in effect at the time of execution affects two holdings, is no ground for holding that the decree is not a rent decree. The new S 26 N no doubt confers new rights on purchasers, but the decree remains a rent decree and for purposes of execution the parties are governed by the Bihar Tenancy Act. S. 171 of the Bihar Tenancy Act can therefore be applied to the decree in execution, and

crops reaped by mortgagee.

Where a mortgagee of a recorded tenant deposits the

mortgagee to prevent the sale that the judgment debtor tenant (mortgagor) would be entitled to regain possession of his holding. A deposit by the tenant judgment-

getting possession—Application by tenant to be put back in possession offering to pay mortgagee amount deposited by him—Power of Court to entertain.

Quære.—Whether the Court has jurisdiction under S. 171 of the Bihar Tenancy Act to entertain an application by the tenant-judgment-de

dispossessed under the section by a

A I.R 1938 Pat. 94

——**S. 174**—*Jurisdiction under—Omission to make deposit at time of application—Effect—Power of Court*

BIRBHUM GHATWALI REG. (1814), S. 5.

to set aside sale. *See* C. P. CODE, S. 151,

1938 P.W.N. 192.

——**S. 181**—*Grant of land to gorait in lieu of services—Resumability.*

Chakrana Jagirs when they are granted in lieu of remuneration for zamindari service differ essentially from those jagirs which may be granted as rewards for past services or grants of land burdened with some

for it remuneration in cash or kind. The zemindar is entitled to dismiss at his pleasure a servant of this kind,

10 R P. 529 = A I.R. 1938 Pat 141.

——**S. 193 and Sch. III, Sub-Cl. 2 (b)**—*Applicability—Money reserved under settlement in respect of*

——**(as amended in 1934), Sch II, Art 2 (b)(ii)**—*Scope—If retrospective—Suit for produce rent after act on cause of action arising before—Limitation.*

Quaere—Whether the Bihar Tenancy Amending Act is

A I R. 1937 Pat. 639.

19 Pat L.T. 519 = 4 B R 633 = 11 R P. 20 = A.I.R. 1938 Pat. 245.

BIRBHUM GHATWALI REG. (1814), S 5.

——S 5—*Ghatwal—Power of Government to dismiss and to forfeit tenure.*

Per *Chatterjee, J.*—S 5 gives in clear terms to the Government full power to forfeit the tenure of the defaulting Ghatwal and to make it over to any person whom it may approve or otherwise to dispose of it in such manner as it may think proper. It is thus evident

which he holds the tenure the Ghatwal is dismissed from his office by the Government his tenure is forfeited and the Government has a right to make a new grant to any person whom it may consider fit. Once a tenure is forfeited the right of the Government to resettle it with any new Ghatwal whc
Ordinarily the Govern
the hereditary claim
Ghatwal but he cannc
ment (*Manohar Lal*
NARAIN *v* RADHA PI

175 I C. 854=19 Pat L T. 519=4 B R. 633= 11 R P. 20=A I R. 1938 Pat. 245.

——S. 5—*Scope—If incorporated in S. 8 (2), Sonthal Parganas Rural Police Regulation.*

(*Manohar Lal and Chatterjee, JJ.*) JOGENDRA NARAIN *v* RADHA PRASAD 17 Pat. 398= 175 I.C. 854=19 Pat L T. 519=4 B R. 633= 11 R P. 20=A I R 1938 Pat. 245

BOMBAY ABKARI ACT (V OF 1878), S. 43 (b)—*Burden of proof—Shifting of.*

The burden of proof on prosecution which shifts under proceedings under the Abkari Act, does not shift until the factum of possession is proved. (*Davis, J. C. and Lobo, J.*) EMPEROR *v* HAJI GHULAB SHAH.
32 S L.R. 689=174 I C 835= 10 R S. 269=39 Cr.L J. 504= A.I.R. 1938 Sind 80.

——S. 47—*Licensee's liability for acts of servant—"All due and reasonable precautions"—Construction of.*

The language used by the Legislature in S. 47 of the Bombay Abkari Act is very wide. But a statute should be construed not with reference to its language, but also its subject matter and object; further in construing the provisions of S. 47 regard must also be had to the express terms of the limitation contained in the section. The section which expects the discharge of a duty by the licensee must always be regarded in the administration of the law subject to the maxim *lex non cogit ad impossibilia ant inutilia.* The phrase "all due and

person would take in endeavouring to prevent transgressions of the terms of the license in carrying out the object of the license The licensee's liability must be decided according to the circumstances of each case. (*Wassoodew and Sameer, JJ.*) EMPEROR *v.* GANPAT

BOM CITY MUNICIPAL ACT (1888), S 527.

LAXMAN. 177 I.C. 665=11 R.B 112= 40 Bom. L.R. 820=A I.R 1938 Bom 427.

BOMBAY CHILDREN ACT (XIII OF 1924), Ss. 3 (a) and (c) and 22—*Conviction of youthful offender—Detention in prison—Certificate—Necessity.*

Where the accused, convicted of the offence of

A I.R 1938 Sind 224.

BOMBAY CITY MUNICIPAL ACT (III OF 1888), Ss. 106 and 110—*Loan by corporation—Issue of debentures with option of renewal—If compulsory*

Section 106 of the City of Bombay Municipal Act

debentures containing a right or option of renewal. (*Beaumont, C. J and Wadia, J.*) VISHWANATH SADASHIV
CITY OF B

—*Powers of Commissioner under—Notice of validity—Notice requiring owner within 15 days to connect unconnected waste water to municipal storm water drain—Validity.*

The notice authorised by S 231 of the Bombay City Municipal Act is one requiring the owner or occupier of a house to make a drain of the character therein specified, that is to say, of such material, size and description and so forth as may appear to the Commissioner necessary. A notice served by the Commissioner on the owner or occupier of a house requiring him within 15 days to connect the unconnected waste water of the nabaries and wasting places in the municipal storm water drain at a particular place after obtaining neces-

——S 394 (1) (b) and Sch. M, Part III—*"Timber"—Plywood—If timber.*

The object of requiring a license for the keeping of articles mentioned in Part III of Sch. M of the City of Bombay Municipal Act, is to safeguard the public against nuisance or danger. Timber is not used in Part III of Sch. M, in any technical sense, it only means wood used for building or carpentry. "Timber" in Part III of Sch. M does not include plywood. Keeping
an offence under
keeping it can be
soodew J.) EM-

5=10 R.B 537= 40 Bom L.R. 322=A.I.R. 1938 Bom. 282.

——S. 527—*Applicability—Act done in pursuance of contract authorised but not required by Act—Suit against corporation—Limitation—Period of six months—Starting point of.*

BOMBAY CITY POLICE ACT (1902), S. 27.

The protection of S. 527 of the City of Bombay Municipal Act extends only to acts done in direct execution of the powers conferred by that Act of the local authority or corporation, and does not cover acts done in pursuance of contract which the local authority or corporation is empowered to enter into, but is not required to enter into, by the Act. Plaintiffs and *N* were joint holders of eight debentures issued by the corporation of Bombay, under the terms of which either the plaintiffs or any of them or *N* could deal with them. *N* died on 13—7—1930, and shortly after, *A*, to whom the debentures had been handed over for collection wrongfully dealt with them by forging an endorsement by *N* in favour of himself and of a nominee for
Bank
ratio
the
corporation pointing out that *A* had forged *N's* signatures and asking the corporation to return the original debentures to the plaintiffs. They sent a reminder on 15—2—1933 On 6—3—1933, the corporation wrote to the plaintiffs asking them to wait for their next letter and to take no action in the meanwhile. After further correspondence the corporation wrote on 27—7—1933 to the effect that it was not possible to reply definitely, but that they could not give a definite promise to admit or deny the plaintif
require to keep in view their
parties concerned. On 11—8—

in contract, (2) that the issue of a debenture containing an option of renewal, and the giving effect to that option were not acts done in direct execution of any

S. 527 of the Act had no application to the case, (4) that assuming S. 527 applied to the case, the cause of action for suit did not arise until a demand was made for return of the debentures and that demand is refused, and as the cause of action did not arise until 27 7-1933, the suit filed on 11—8—1933 was well within time

BOMBAY CITY POLICE ACT (I OF 1902), S 27 *—Construction and scope—Order under—Conditions for making—Commissioner's power to deport dangerous or undesirable character.*

Section 27 of the City
very limited application,
sections which confer upon t
power to deal with various e
the public safety, and the orders to be r
Commissioner under those sections are
strictly temporary character. It is clea
language of S. 27 that the foundation fc
under the section is the movements or enc
any gang or body of persons Before any a
taken under the section it must appear to the commis-

sioner that the movements or encampment of a gang or body of persons are or is causing or calculated to cause danger or alarm, or a reasonable suspicion that unlawful designs are entertained by such gang or by any member or members thereof, then only can the Commissioner give directions to the members of the gang or body. He has no power under the section to deport any one whom he regards as a dangerous or undesirable character apart from his actions as a member of a gang or a body of persons moving or encamping in the city. (*Beaumont, C.J., Rangnekar, Wadia and Wassoodew, JJ.*) EMPEROR *v* YARMAHOMED AHMEDKHAN.

I L R. 1938 Bom. 403=176 I.C. 839=
11 R B. 53=39 Cr.L J 792=40 Bom L R. 483=
A I.R. 1938 Bom. 338 (F B).

——S 27—*Order under —Validity—If can be*
in Court of law—Prosecution for disobedi
ler—Duty of Court—Burden of proof.

An order made under S. 27 of the City of Bombay Police Act is, it is true, an order made by an executive officer and is not subject to appeal or revision in any Court But that is very different from saying that when an attempt is made to impose a penalty for breach of an order under S. 27, the validity of the order cannot be impeached In all charges before a Magistrate under S. 128 of the Act for disobedience of an order under S 27, it is incumbent upon the Magistrate to be satis-

why the Commissioner should not give evidence before the Court as to the general character of the material which he had before him. (*Beaumont, C.J.,* *J.*) EMPEROR *v.*

=176 I C 839=
Bom.L R. 483=
A I R. 1938 Bom. 338 (F B.).

——S. 128 — Charge under—Burden of proof—Validity of order disobeyed—If can be gone into. *See* BOMBAY CITY POLICE ACT, S 27.

40 Bom L R 483 (F.B).

BOMBAY CIVIL COURTS ACT (XIV OF 1869),
nd Class
—Decree

a Second
laint was
valued at Rs. 200, but the decree passed was for over Rs 5,000.

Held, that S. 8 of the Bombay Civil Courts Act was

DE, R. 7—
to hospitals

Bombay Civil
sed it really
does not mean more than is admitted." Rule 7 cannot be regarded as having reference only to cases

BOMBAY CO OPERATIVE SOCIETIES ACT (1925), S 59.

brought to the hospitals by the police themselves. (*Broomfield and Norman, JJ.*) S. D. MARATHE *v.* PANDRANG NARAYAN. I.L.R. 1938 Bom. 770= 177 I.C

BOMBAY
(VII OF 19
Sale proceeds
ment at the in
bution—Right of.

S. 59 (1) (*b*), Bombay Co-operative Societies Act, provides for the execution of an award
applicable for the recovery of arrears
Where therefore an award under the Bo
tive Societies Act is executed under S. 5
Act according to the procedure provided
arrears of land revenue by the sale of the judgment-

BANK, LTD *v* HYDERABAD AMIL CO-OPERATIVE URBAN BANK, LTD. 176 I.C. 709=11 R.S 32= A.I.R. 1938 Sind 157.

——S. 59 (1) (b)—Collector acting under—If "Court"—Proceedings under—If ste tion. *See* LIMITATION ACT, ART. 18

BOMBAY COURT OF WARDS ACT (I OF 1905), S. 44 A—*Power to call for documents.*

S. 44-A gives the Court of Wards power to call for production of documents for the purposes of the Act referred to in S 4 and other sections of the Act and not only for the purposes of Ss. 15 and 16, and an enquiry under Ss. 15 and 16 is not a condition precedent for the exercise of the power So also the mere fact that a claimant to the estate has filed a civil suit against the Court of Wards would not deprive it of the power to call for documents under S. 44 A. (*Davis, J C. and Mehta*

Judge and of the Assistant Judge in an appeal relating to the amendment of the list of voters are in the capacity of *persona designata* and therefore an application against such orders does not fall under S. 115, C. P. Code. (*Davis, J C. and Dadiba C. Mehta, J.*)

BOMBAY KHOTI SETTLEMENT ACT (1880), S 6.

of music—Breach—Ringing of temple bell at time of worship—Offence—Mens rea—*Effect of.*

A notification was issued by the District Magistrate

make darshan.

Held, that the bell was not a musical instrument, and the mere ringing of the temple bell by the accused did

ntrary to the noti-
ea in the accused
tion, because both
r before any one
Wassoodew, JJ.)
BHIDE.
=10 R.B 454=
A.I.R. 1938 Bom 173

BOMBAY HEREDITARY OFFICES (WATAN) ACT (III OF 1874), S. 5—*Permanent lease of watan land—Validity*

watan lands is expressly pro-
mbay Watan Act. (*Broom-*
BABASAHEB APPASAHEB *v.*
40 Bom L R. 1015=
A I.R. 1938 Bom 492.

——S. 5—Scope—If overridden by Bombay Land Revenue Act, S. 217. *See* BOMBAY LAND REVENUE ACT, S 217. 40 Bom L R. 461.

BOMBAY HIGH COURT RULES (APPELLATE SIDE), App. E. R. VI—*Applicability—Land acquisition proceedings—Suit by owners of lands for declaration of invalidity and injunction—Dismissal—Appeal—Valuation—Advocate's fee—Calculation of.*

A representative suit by owners of properties which are sought to be compulsorily acquired for a declaration

40 Bom.L.R. 531.

——Ss. 6 and 8—*Scope of—Unauthorised transfer of Khots land by occupancy tenant—Effect—Rights and status of transferee—Possession for over 12 years—Effect of—If becomes occupancy tenant—Right of Khot*

the Khots of a village, *H. D.*
nant of the lands sold the same
appellants. After *D. 1.* de
lands to the respon

BOMBAY KHOTI SETTLEMENT ACT (1880), S. 9.

21—10—1927, and in December, 1928, passed a rajinama in their favour. The respondents, the admitted Khots of the occupancy holding of *D*, gave notice to the appellants to quit on 27—12—1929 under S. 84 of the Bombay Land Revenue Code, and on 7—2—1930, sued for ejectment of the appellants and for possession. The appellants pleaded that they had become occupancy tenants of the respondents ... the occupancy ... over 12 years.

Held, (1) that under S. ... Act the appellants became the ...

... under a wrong transfer, could not claim to be occupancy tenants merely because they had been in possession for over 12 years and set up adverse possession; ... respondents, having determined the ten... to quit under S. 84 of the Land Rev... entitled to evict the appellants. (*Rangnekar and Sen, JJ.*) RAMKRISHNA *v.* BAPURAO.

175 I.C. 518 = 10 R.B. 564 = 40 Bom L R 390 = A.I.R. 1938 Bom 284.

——(I OF 1880, as amended in 1912), S 9—*Scope—If retrospective*

The amendment to S 9 of the Khoti Settlement Act made in 1912 has no retrospective ... apply to the case of a tran... to 1912 (*Rangnekar and* ... *v.* BAPU RAO.

40 Bom.L R ...

BOMBAY LAND REV. ...

... proved to have commenced from a particular year or period In such a case if the tenant proves that he was on the land, say in 1848, and if it is not shown that his occupation commenced in that year, a presumption could be made that his ancestors were on the land even before that date, though there is no presumption as to the actual date from which the occupation commenced.

... proved to be on the land in 1848, three years after the particular year fixed by S. 5, would not ... the benefit of the presumption that his ... from or before 1845—1846. Where ... establishes the tenant's possession since ... is no definite evidence that he was on ... that year, and it is found that there were various kabuliyats passed by the tenant's ancestors and himself from 1855 to 1901 admitting an annual tenancy, the tenant cannot be held to have established a permanent tenancy under S. 83 of the Bombay Land Revenue Act. Nor can the tenant claim the benefit of S 5 of the Khoti Settlement Act, when his possession is not shown to

BOMBAY LAND REV. CODE (1879), S. 217.

have cor... SONU K...

A I.R. 1938 Bom. 381.

——S. 83—*Applicability to khoti tenures—General and special enactments.*

Quaere.—Whether S. 83 of the Bombay Land Reve-...

... *of.*

S. 83 of the Land Revenue Code would apply in the ... shown to have ... were rendered in... No. 16 of 1827. ... has commenced subsequently cannot acquire title to a permanent tenancy of the lands by adverse possession as against the watan lands from whom they hold. When the tenancy has been ascertained with reasonable definiteness, S 83 cannot in terms assist the tenant. The section has no application to a case where the commencement of the tenancy has been traced either to particular year or to a ...

...—*Notice under—Proper service of—What* ... —*Notice sent by registered post but refused by* ...

... venue Code ... he tenant a ... a notice by ... rs, but the ... it must be ... (*Broomfield* ...) ... ASAHEB *v.* ... R 1015 = A I R. 1938 Bom 492.

——S. 217—*Applicability—Watan lands—Alienation contrary to S. 5, Watan Act—Permanent tenant under—If becomes occupant by introduction of survey settlement.*

S. 217 of the Land Revenue Code would not apply in the case of watan lands governed by S. 5 of the ...

... tenant under such a lease granted by the watandar ...

... that the lessee acquires occupancy rights under S. 217 of the Land Revenue Code. (*Rangnekar and Wadia, JJ.*) SHRIPAD RAMACHANDRA *v.* TULJARAMRAO.

177 I C 593 = 11 R.B. 101 = 40 Bom L R. 461 = A.I R. 1938 Bom. 372.

——(as amended in 1913), S. 217—*Scope—Retrospective operation.*

BOMBAY LOCAL BOARDS ACT (1923), S. 8.

S 217 of the Bombay Land Revenue Code, as amended in 1913, has retrospective effect (*Rangnekar and Wadia, JJ*) SHRIPAD RAMCHANDRA v TULJARAM RAO. 177 I C 593 = 11 R C. 101 = 40 Bom.L.R. 461 = A.I.R. 1938 Bom. 372

BOMBAY LOCAL BOARDS ACT (VI OF 1923), S. 8 (b)—*Scope—If controlled by S. 14 (3)—Right of person whose name appears in voters' list as finally published to stand as candidate—If can be challenged.*

S. 8 (*b*) of the Bombay Local Boards Act cannot be

finally publishec
right of any pers
therein, (*Diva*
CHIMNAJI. I

——**Ss 13 and 14 (2)**—*Construction and scope—Voters' list—Finality as regards the right to vote or to be elected*

There is nothing in Ss. 13 and 14 of the Bombay Local Boards Act which provides that the voters' list is conclusive in the sense that no one has a right to

——**S. 15 (2) (a) (ii) and (4) (c)**—*Construction and scope—If to be read together—"In his own right"—Meaning—Joint Hindu family—Right of member other than manager to vote at election—Family property entered in revenue records in member's name—If sufficient.*

The words "in his own right"
the Bombay Local Boards Act
the land by himself, in other
exclusive owner of the land. So

BOMBAY MUNICIPAL BOROUGHS ACT (1925), S. 33.

——**(as amended by Act XIII of 1935), Ss. 139 (2)**—*Applicability—Sub overseer of Local Board preparing false bills and overcharging Board in course of his duty of taking measurements of work and preparation of bill—Prosecution for—Limitation.*

A part of the duties of a sub-overseer under a Local Board was the taking of measurements of repair and other work done and the preparation of bills in respect thereof. The overseer prepared false bills and overcharged the Board

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. 834 =
S 7 =
id 116.
LES. R 21—
ACT. Ss. 11
om L R 1099.
UGHS ACT
—"Removal or
uction by way
of punishment—Separation of two offices held jointly by one and the same individual and offer of one of them alone to him on lower salary—If covered by S. 33.

The language of S. 33 of the Bombay Municipal Boroughs Act is wide enough to cover the case of removal or reduction of the Chief Officer, which is not by

——**S. 33**—*Construction—Resolution passed by majority of Councillors present at meeting—Majority not amounting to two thirds of the whole number of Councillors of Municipality—Effect—Action taken upon such resolution—If* ultra vires.

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tion of—Suit for damages—Measure of damages.

remain in service until he reaches a particular age fixed by the rules under the Act; nor can he claim a gratuity the grant of which is entirely at the discretion of the Municipality under the rules made under the Act. Since

be awarded to him in a suit for damages for wrongful dismissal are wages for the period of notice, i.e., one month's pay. (*Broomfield and Wassoodew, JJ*) MUNI-

Courts.

violates the rules of procedure laid down by the law of

infringement

is disclosed,

same in the

d Wassoodew-

JA *v.* RAMA-

74 I C. 643 =

10 R.B. 477 = 39 Bom.L R. 1269 =

A I R. 1938 Bom. 137.

——S. 68 (1) (d)—*Scope—Duty of Municipality—Cutting off of water supply at night—Destruction of*

to delay in getting water to

'ity to damages—Tort—Non-

Appellant had a shop within the Municipality of Ahmedabad. The Municipality had, under the advice of a Government expert and owing to shortage of water,

damages on the ground that the latter were guilty of a

BOMBAY MUNICIPAL BOROUGHS ACT (1925) S 114.

INDIA, LTD. 174 I C

40 Bom.L.R. 111 = A

——S 114 (2)—"*Purchase*"—

compulsory acquisition.

The word "purchase" in S

174 I.C 67 = 10 R.B. 420 =

——Ss. 123 and 137—*Construction and relative scope—Notice of proposed construction—No steps taken by Chief Officer within one month—Right of owner to proceed with construction—Drains constructed for house—Right to demand demolition on the ground of want of sanction or notice.*

Where a notice specifying the building sought to be constructed is given, and the Chief Officer of the Municipality has not taken steps within a month in relation thereto, the building owner can proceed with his proposed construction; that is on the basis that the consent

tion can only be ordered after conviction has been

and Divatia, J.) EMPEROR *v.* DIRAJLAL DALSUKH RAM. 174 I C. 466 = 39 Cr L J. 413 = 10 R B 451 = 40 Bom.L. R. 67 = A I R 1938 Bom. 186.

——S. 129—*Construction and Scope—Notice under —Requisites of validity—Powers of chief officer—*

BOM. PREVENTION OF ADULTERATION ACT (1925), S. 4.

ildings to owners of , out a six sed by the

know in the first instance what he is required to do (*Beaumont, C. J. and Wassoodew, J.*) EMPEROR *v.* TRIKAMLAL KESHAVLAL. 175 I C. 765 = 11 R B.5 = 39 Cr L.J. 667 = 40 Bom L R 314 = A.I.R 1938 Bom. 303.

——S. 206—*Limitation—Starting point—Wrongful dismissal of Municipal servant—Suit for damages—Period of six months—When commences to run—Date of resolution of dismissal or date of actual handing over of charge.*

A suit by a dismissed servant of a Municipality for

A I R 1938 Bom. 137.

——S. 4 (1)—*Conviction—Validity.*

32 S.L.R. 684 = 174 I C. 685 = 39 Cr L J. 474 = 10 R S 259 = A.I.R. 1938 Sind 7

——S. 4 (1) (a)—*Applicability—Sale to officer—Offence.*

BOM. PREVENTION OF ADULTERATION ACT (1925), S. 4.

An offence under S. 4 (1) (a) is committed in respect of adulte
public o
Lobo, J
CIPAL C

——**S. 4 (1) (a)**—*Liability of sleeping partner.*

A proprietor of a shop is liable for the sale of adul

proper that that power should be exercised. The cases in which the Court would grant a request for the issue of a commission to a warrantor would be rare, but there is nothing in S. 4 (4) (*b*) to prevent the Court asking

Court, and it is only in exce
he should not do so. (*Da*
GIRDHARILAL *v.* EMPEROR
174 I.C. 542=39 Cr

——**S. 12 (1)**—*Complai*
Honorary Magistrates as
plaint signed by one Magistrate
sence of one only.

In Hyderabad the Magistrat
'B' Bench, are Magistrates of
when sitting together as a Be
singly they are Magistrates onl
Where the complaint was ad
Honorary Magistrates as such, f
the verification of the complaint i
signature of one Magistrate, it wo
Magistrates were not present sitti
J. C. and Mehta, J.) LIL
WADHUMAL.

——**S. 13 (1)**—*Scope—Summ*

the prosecution case, for time once gone is gone beyond recall. This cannot be regarded as a mere irregularity which can be cured. (*Davis, J.C. and Mehta, J.*) LILARAM LADAKMAL *v.* WADHUMAL.
A.I.R. 1938 Sind 209.

BOM. PREVENTION OF GAMBLING ACT (1887), S. 6.

——**S. 13 (2)**—*Scope—If mandatory—Absence of*

provisions
it the name
and place
ot be held
n the summons it would be a fatal flaw in the proceedings. All that can be said is that it is an irregularity which can
mons
it as
may
ce in
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L.
209.
ACT
truc-
ning
of—"Gaming"—Distribution of profits of gaming—When an offence punishable under Act.

"Gaming", as defined by S. 3 of Act IV of 1887 as amended in 1936, includes various ancillary and acces-

The
lace is
ng the
place
he dis-
g, the
ffence

identity of the accused. The purpose of requiring independent evidence corroborating the evidence of the approver is that the Court can be satisfied that he is speaking the truth. It has no other purpose. The amount of that evidence depends upon the circumstances of each

particular case, the question as to whether it provides

——Ss. 6 and 7, as amended by Bombay Act I of 1936—*Interpretation of.*

Ss. 6 and 7 must be interpreted in a reasonably broad spirit having some fair relation to the realities of the

He must judge and be judged by all the surrounding circumstances and the

He may particularly,

betting is betting in A

suspect that when sh

them are considered of sufficient importance by the

Dadiba, C. Mehta, J.) EMPERO

——Ss. 6 and 7, as amend

of 1936—*Scope and effect—Pres*

When to be raised—Duty of Cou

that gambling is going on in a particular house in American Futures, a Sub Inspector finds a number of

S. 7 Where in such a

ount of their presence

which the Court can

interfere in revision

J C. and Dadiba C. Mehta, J.) EMPEROR *v.* ALI MOLO

A.I R. 1938 Sind 228.

——S. 12 (a)—*Construction and scope—Offence—Essentials of—Conviction — Proof requisite— Mere*

aming—Sufficiency—Accused

money, proceeds of gaming

place—Liability to conviction

essity.

used to visit his village where he had a house several

possession a substantial sum of money which, it was

ls of gaming and which

for the purpose of dis-

upon him certain chits

satta chits which were

fence under.

To convict an accused under S. 24, it is not sufficient

BOMBAY REGULATION (IV OF 1827),—S. 26— Law to be applied in the trial of suits. *See* CONFLICT OF LAWS. 39 Bom !

BOMBAY SURVEY AND SETTLEMI (I OF 1865), S 38—*Kabulayat taken by from managing khot—Effect—Right of k faida in kind.*

as he may be advised against Government, or approach Government to get the kabulayat charged but until that is done, the managing khot cannot go beyond the terms of the kabulayat so long as it stands. If the kabulayat entitles the khot to recover faida in kind, he can take it in kind, and the tenant cannot resist the demand and insist on payment in cash (*Rc*

NARAYAN *v.* AMIRUDDIN SHE

11 R.B 3

BROKER. *See* PRINCIPAL AND AGENT—BROKER.

BUDDHIST LAW (Burmese)—*Adoption—Kettima form—Onus.*

e k t s r o s b a (E

Under Burmese law a *de facto* guardian cannot dis-

of adoption—Change of family.

Kettima adoption may be proved either by evidence of a ceremony on a particular date of giving and taking in adoption, or by evidence of a course of conduct which cannot be explained on any other basis than that the children had been adopted with a view to inherit. The

——(Burmese)—*Adoption—Kettima and apatitha forms—Distinction—Intention—Proof — Duty of a Judge.*

established upon oral evidence alone. All that the

BUDDHIST LAW (Burmese).

n oral, document- all the different that intention and as being consis- kettima adoption (.) MA PU TU

A.I.R. 1938 Rang. 369.

doptive

n these doptive parents or that if they do not do so the proof of adoption should be deemed incomplete, yet in the case of young children it is a normal characteristic of adoption that the up-bringing of the children adopted should be undertaken by the adoptive parents and where this is not done, one must look carefully at the surrounding

A.I.R. 1938 Rang. 381.

——(Burmese) — *Adoption — Proof — Kettima Daughter.*

Held, that the evidence was sufficient to establish the

174 I C. 223 = 10 R R. 393 = A.I.R. 1938 Rang. 40.

——(Burmese)—*Dedication of property to nuns—Gifts—If exempted from operation of S. 123 of T. P. Act.*

Buddhist religious gifts are not excepted from the operation of S. 123, T. P. Act, since that Act has been

——(Burmese)—*Family living in patriarchal state—All working and living together—Members seeking service and remaining separate—Returning after*

money, and where one member went out and found work

BUDDHIST LAW (Burmese)

and remained apart, but came back on his father's death and continued his father's business and had a separate banking account of his own as distinct from that of the family, *prima facie* his banking account would be his personal property until the contrary is shown. (*Bagulev and Shaw, JJ.*) DAW KYIN v. MA HLA YI. 176 I C 909=11 R R. 89= A.I.R. 1938 Rang. 71.

——(Burmese)—*Gift—Validity—Gift affecting inheritance.*

his act in making a gift, owing to the circumstances under which it is made or the conditions attached thereto are such as to affect the succession to, or inheritance of, his property after his death, Buddhist law must be resorted to, to arrive at a decision as to whether his

against their step-mother on their father's death. (*Mosely and Dunkley, JJ.*) MA E NYUN v. DAW MA GET 178 I.C 200=A.I R 1938 Rang. 293

——(Burmese)—*Law applicable—Duty of Courts.*

The task of the Courts of British Burma has been, and still is, to deduce from the *ad hoc* decisions compiled in the Dhammathats general principles of the common law of Burma which are in accordance with the habits and customs of the Burman of today (*Roberts, C. J., Dunkley and Braund, JJ*) MAUNG THEIN v. MAUNG NYO SEIN. A.I.R. 1938 Rang. 449 (S B).

——(Burmese)—*Marriage—Dissolution by desertion—Allegation of adultery on part of wife—Wife, if*

rcum- is to usually asked to some form of entertainment in order to signify the occasion, and where this is dispensed with, evidence

BUDDHIST LAW (Burmese).

of the intention to enter into married life must be clear. Clandestine acts of sexual intercourse do not by themselves establish marital relationship and where there is no regular cohabitation under the same roof and the couple who resort to each other for purposes of intimacy are thought by some to be engaged, and by others to be cousins or mere friends, proof of marriage has not been established by reputation. Moreover, as it takes two persons to make a contract, in order to prove marriage there must be evidence not merely of desire by one per-

MYINT. 175 I C. 418=39 Cr.L J. 571= 10 R.R. 490=A.I R. 1938 Rang. 115.

——(Burmese)—*Marriage—Validity—Hindu becoming Buddhist, marrying according to customs of Buddhists.*

Burmese Buddhist way, the at he has become a Buddhist. nforming with the customs of rrirge must be regarded as a ciple of *lex loci contractus.* CHINNASWAMI PILLAY v. MA 174 I C. 558=10 R.R 414= A.I R. 1938 Rang. 51.

——(Burmese)—*Mortgage—Equitable mortgage by Burman—Burman's wife dying leaving son—Decree passed on mortgage—Burman marrying again—Suit by son for declaration that mortgage decree did not affect his mother's share—Second marriage, if affects mortgagee's rights.*

An equitable mortgage was created by a Burman. His wife died afterwards leaving a son. A mortgage decree was passed. The Burman afterwards married again and the execution of the mortgage decree was stayed pending the decision of a suit which was brought by the son for a declaration that the mortgage decree

ty. mortgagor the decree even if the her death, e property his interest ured to the and A.I. UNG CHIT R R. 94= Rang. 108.

t monk—

taik which it entitled the latter the pogga- oof of any misconduct on his part or of such behaviour as would render his eviction from the kyaungtaik desirable. The sanghika property does not belong to any particular person or group or section It partakes of the nature public religious property. When a kyaung bec

BUDDHIST LAW (Burmese).

vacant, there is nothing wrong in a peaceably in to dwell in the ...
Dunkley, J.) U EIN

——(Burmese)—
to share when one parent is surviving.

In the absence of kettima or natural children, the apatitha child is entitled to inherit in the estate of his adoptive parents when both parents are dead, but he has no right to share in the estate of the deceased parent when the other survivor parent is living. *(Mya Bu and Mackney, JJ.)* MA SINT *v.* MA MA GALE.

A I R. 1938 Rang. 451.

——(Burmese)—*Succession—Burmese male marrying twice—Both wives living simultaneously—Child from former marriage—Right to inherit to step-mother.*

When a Burmese Buddhist male had contracted two marriages and both wives had been alive at the same time, the children of the first marriage in point of time whose parents both predeceased their step-mother, are heirs of their step mother in respect of her separate property, when there are no children or direct descendants of the second wife. *(Roberts, C. J. Dunkley and Braund, JJ.)* MAUNG THEIN *v.* MAUNG NYO SEIN.

A I R. 1938 Rang. 449 (S B)

——(Burmese)—*Succession—Death of one parent and re marriage of the other—Rights of children taking a share—If they retain further claim in respect of future property—Widow and widower having children remarrying—One of the sons of widow taking his share —Right of the other son to share in the lettetpwa or hnapazon property.*

Under the Burmese Buddhist Law a child who takes his share in the estate of his parents after the death of one parent and upon the remarriage of the surviving parent ceases to have any further claim in the remainder of such estate and in the property acquired subsequent to the remarriage of the surviving
bly in the event of the surviving
leaving a widow or widower or des
widower, married *D*, a widow. T
their respective previous marriages and also some *payin*

as one
were
of *D's*
re-marriage after the death of their father. After *D's* death the representatives of *M* brought a suit for half of the lettetpwa or hnapazon property of *U* and *D*.

Held, that it was not logical that, because *S* or his representatives had taken away his share in the property of *D's* previous marriage and *S* thus dropped out of the new family, the share to which *M* or his representatives

hnapazon property of *U* and *D* *(Mackney, Mya Bu and Spargo, JJ.)* MAUNG PO ZAW *v.* MAUNG AN.

A.I R. 1938 Rang 376.

——(Burmese)—*Succession— Dhammathats—Former marriage—Meaning.*

Two contemporaneous or overlapping marriages may be described as 'former' and latter, the 'former' being that which was contracted earlier and the latter being

BURDEN OF PROOF.

Preference—Limits of rule that inheritance should not ascend when it can descend.

descend, still operates in competition between relations of full blood and those of the half blood of the same degree of relationship to the deceased. *(Mya Bu, Offg. C. J. and Mackney, J.)* MRS KIRKWOOD *v* MAUNG SIN.

174 I C. 603 = 10 R.R. 412 =
A.I.R 1938 Rang. 74.

——(Burmese)—*Succession—Share of orasa son by first wife on father's remarriage.*

Where after the death of his wife the widower marries a second wife, his orasa son by the first wife is entitled to his share in the estate as it existed at the time of remarriage. *(Baguley and Mosely, JJ.)* A. L. A. CHETTYAR FIRM *v.* MAUNG PO TAW.

1938 Rang L R. 583 = 177 I.C. 435 = 11 R.R. 128 =
A.I R. 1938 Rang. 250.

——(Chinese)—*Letters of administration—Estate of*

a non-Buddhist, that is, whether the succession to his estate is governed by the Chinese Customary Law or by the Succession Act, for in either case the proper person to obtain letters of administration to his estate is his widow, and other persons having claims to the estate

11 R R. 153 = A I R. 1938 Rang. 201.

Under this law the son is entitled to the whole of the deceased's estate to the exclusion of daughter. *(Mosely and Dunkley, JJ.)* OON CHAN *v.* KHOO ZUN.

177 I C. 501 = 11 R R. 134 =
A I R 1938 Rang 254

BURDEN OF PROOF — *Encroachment—Suit by owner of land against adjoining owner—Proof of disturbance of boundary marks—If essential—Measurements and area—If conclusive.*

is of little value, an argument based on area is of even less value, because there may have been an encroachment in any direction or in any part of the plot. The

1938 R.D. 71 = 1938 A.L R. 56 =

BURDEN OF PROOF.

1937 A.L J. 1216=1937 A. W R 1078= A.I.R. 1938 All 36.

——*Onus wrongly cast—Interference by High Court.*

In the first place it is for the plaintiff to substantiate [illegible]

——*Receipt executed by illiterate woman—Plea of ignorance of contents—Onus.*

Where an illiterate woman who usually conducts her own business pleads that a re [illegible] affixed her thumb impression, [illegible] she was not aware, the onus [illegible]

[illegible] *dars—Onus*

In a suit for ejectment, if th [illegible] the lands are within the ambit [illegible] dari but pleads that he is a [illegible] ment, the onus is on him to p [illegible] *Ali and Manohar Lall, JJ.)* [illegible] NARAIN VARMA. [illegible]

——*Suit on mortgage—Plea by defendant that he was a minor on date of mortgage—Onus.*

[illegible]

and consideration by defendant—Plaintiff proving execution—Effect—Further proof of consideration by plaintiff—Necessity. *See* NEGOTIABLE INSTRUMENTS ACT, S. 118. 1938 P.W N. 634.

BURMA CO-OPERATIVE SOCIETIES ACT (VI OF 1927), S 50 (2) (f)—*Rules made under—R. 15—Jurisdiction of Civil Courts, if taken away.*

The rules made under the Burma Co operative [illegible]

[illegible] *of date of birth—Option of Court.*

Where there is evidence only of the year of birth it is [illegible]

BURMA LAND AND REV. ACT (1876), S. 44.

R. 4-A of the rules as framed under S 12 of the Burma Ferries Act is *ultra vires*. It cannot be said that the rule is one consistent with the Act, framed for carrying out its purposes and objects. (*Baguley and* [illegible] CHAIRMAN, DIS- [illegible] ng L R 573= [illegible] 38 Rang. 384.

[illegible] *Test.*

[illegible] when he waits [illegible] regularly (that [illegible] ught be done [illegible] e of repeatedly, [illegible] ness of it), for hire by the public or by any- [illegible] oses to employ him to cross the river or across the river. (*Baguley and Mosely, JJ.*) SHWE PHONE *v.* CHAIRMAN, DISTRICT COUNCIL, MERGUI. 1938 Rang L R. 573= 178 I.C 445=A.I.R 1938 Rang 384

[illegible] eam- [illegible] t the [illegible] fish fishery; he does not [illegible] erein from Govern- [illegible] the property in the lessee's possession [illegible] ers not that for his [illegible] the lessee dams up [illegible] pe out of it. This operation is merely preliminary to catching the fish. Even after that has been done any member of the [illegible] provided that he may catch fish [illegible] fence of criminal [illegible] IOHAMMAD CAS- [illegible] 11 R R 31 (2)= [illegible] 1938 Rang. 220.

——*Rules under—R 45—Meaning of.*

The meaning of R. 45 of rules framed under Burma [illegible] is not allowed. The bar [illegible] ling may be lifted at any [illegible] missioner with the Commis- [illegible] thereafter, so long as it has [illegible] can be practiced without [illegible]

BURMA GENERAL CLAUSES ACT, S 16—Scope and effect of. *See* C. P. CODE, O 40, R. 1 and O. 43, R. 1 (*s*) A I R. 1938 Rang 387.

BURMA HIRED MOTOR VEHICLES RULES, R 7—*Child under 7 registered as owner of motor vehicle—Such vehicle plying for hire without licence—Liability of child to conviction—Penal Code, S. 82.*

In Burma, although no person under the age of 18 [illegible] o be no provision [illegible] being registered [illegible] motor vehicles. [illegible] o is a registered [illegible] convicted of the offence of plying it for hire without a licence, in view of S. 82 of the Penal Code which applies not only to offences under the Code but also to offences under any [illegible] nce of special provisions [illegible] *Baguley, J*) THE KING [illegible] 1938 Rang L R. 227= A.I.R. 1938 Rang 400.

[illegible] VENUE ACT (II O [illegible]

of demand address [illegible]

BURMA LAND AND REV. ACT (1876), S. 45.

deceased owner, served on care-taker of property—Validity of sale.

Where a notice of demand under S. 44 of the Burma Land and Revenue Act for Municipal taxes, which was addressed to an owner of property who had been dead was served on the care-taker of the property, there was no valid service of the notice upon any person liable to pay within the meaning of that section. The care-taker

It is not the owner that signs a
revenue officer signs it and he signs
the sale that has taken place; and

10 R R 398=A.I.R. 1938 Rang. 55.

——S. 45—*Sale under—What passes—Revenue officer signing sale certificate in wrong form—Effect of.*

Where the attachment for sale
sale proclamation is also under
under that section, and it would
title and interest of the owner.
some months the revenue officer
in the wrong form cannot alte
(*Mya Bu, Offg C J, and*
HLAING *v.* CHETTYAR FIRM. 174 I C. 260=
10 R.R. 398=A.I R 1938 Rang 55

——S 56—*Scope—Jurisdiction of Civil Courts.*

The prohibition under
jurisdiction of the Civil
which Government is a p
garding the right to occupy
duals. (*Roberts, C J. and Dunkley, J.*) MAUNG THAUNG *v.* SHAIK ABDUL GANI.
1938 Rang.L R. 603.

BURMA MUNICIPAL ACT (III OF 1898), S 62—

find out what the hypothetical rent may be. A test based upon the actual figures of prc
applied where a hereditament itself
profit making characteristic, enabling
out from other classes of hereditamer

CAL HIGH COURT INSOLVENCY RULES (1910), R. 79.

directory and not a mandatory significance. Hence a breach of this rule does not make a contract void.

Per *Sharpe, J.*—The rule was either under S. 71 and beyond the powers of the Local Government to make or at least it was only directory if made under S. 229 (*g*) and it could not in any way interfere with the right acquired by third persons under any contract entered into with the Municipality, even though it had
d into it otherwise than in accordance
rections given in the rule. (*Roberts, C.J.*

Legality.

order there-
the Training
(*Mosely, J.*)
L.J. 697=
Rang. 228.
IELS ACT

Where a person is convicted of an offence of managing a brothel under S. 11 (*a*) of Burma Suppression of Brothels Act, a sentence of fine or in default imprisonment is entirely inadequate in such a case. To stamp out
of this kind it is proper that the offender
ent to prison (*Roberts, C.J.*) M ULLA *v.*
174 I.C. 885=39 Cr L J. 494=
10 R R 439=A I R. 1938 Rang. 107.

BURMA VILLAGE ACT (IV OF 1907), S. 12—

Offence under—Villager not paying thathameda tax—Order to him by headman to appear at Township office—Disobedience of order.

A.I.R 1938 Rang. 180.
S AND
deposit

les and

vency Rules on the ground that it was filed out of time, does not amount to the shutting out of evidence or the preventing of the debtor from giving any further evi-

of the Original Side Rules is to require

ckridge, J) MONI SETHANI v. RADHA KISSEN 42 C.W N 601.

——Ch. 38, R. 33—*Time for filing written statement—Power of Court to extend—Defendant not asking for extension within period fixed by summons*

R 33 of Chap. 38 of the Original Side Rules gives the Court power to extend the time for filing a written

v CALCUTTA IMPROVEMENT TRUST. 174 I C 756=10 R C 712=A.I R 1938 Cal 43.

——Ss 35 154 and 160 (e)—*Chairman's power to institute legal proceedings—Delegation of—Legality*

The delegation by the Chairman of his power under S. 154 of the Calcutta Improvement Act to institute legal proceedings is a direct contravention of the provi

CALCUTTA MUNICIPAL ACT (III OF 1923), Ss. 129 to 142—*Applicability—Liability to assessment not admitted.*

Ss. 129 to 142 of the Calcutta Municipal Act pre-
s which are the
assessable to the
have reference
assessment and
is to the quan-
in which it has
o cases
consoli-
GAR-
PORA-
N. 789.

-S. 205—*Division of assessment of premises under (i)—Whole of premises, if subject to statutory*

e division of assessment of the premises is made under the provisions of S 133, Cl. (i) of the Calcutta Municipal Act, the whole of the premises so affected remain subject to the statutory charge. (*Lort Williams, J*) CORPORATION OF CALCUTTA v BON BEHARY SHAW. I L R. (1938) 2 Cal 209=178 I C. 99=42 C W N. 582=A I R 1938 Cal 581.

——S. 359 (6) and (7)—*Particular portion of bustee ... declared ... bustee standard plan with*

the bustee may be
standard plan with
is for the Corpora
f anything of the
ed or varied The
S (6) of S 359
ub-S. (7) has been
of a street, project-
ent of which affects
-sections is declared
s 'de-bustified', *i.e.*,
earlier sub sections

of S. 359, the practical question arises as to how far, if at all, the alignment of the projected street should be varied (*Ameer Ali, J.*) KISSORY LALL v CORPORATION OF CALCUTTA A I R 1938 Cal. 870.

——Sch I—*Definition of Calcutta—'Fort William'—Meaning of.*

The words 'Fort William' in Sch I of the Calcutta

C. P. DEBT CONCILIATION ACT (1933), S. 4.

The Debt Conciliation Act lends itself to abuse and fraud very easily, and must be very strictly construed and vigilantly applied by the special authority created by the Act. The Debt Conciliation Boards should therefore be alert and should first satisfy themselves about the *bona fides* of every application for settlement of debts. (*Niyogi, J*) TIKA RAM *v.* GANPAT SAHAI. 1938 N.L J. 17=A.I.R. 1938 Nag. 373

——S. 4—*Fraud on Court—Purchase of land for purposes of jurisdiction—Parties admittedly agriculturists*

... of purchase a fraud upon the Court. (*Niyogi, J.*) BALWANT *v.* TUKARAM. 1938 N.L J. 235

——S. 4—*Right to apply to under—"Debtor"—Person earning livelihood as pleader's clerk for many years—Acquisition of tenancy for purpose of application—Right of such person to apply*

A person who earns his livelihood mainly by agriculture is a debtor entitled to apply under S. 4 of the C. P. Debt Conciliation Act. It is not merely necessary that he should have tenancy or proprietary land but also that it should be the main source of his maintenance. A person who has been earning his livelihood as a pleader's clerk for many years and as a private servant and who acquires some tenancy land only to enable himself to apply for settlement of his debt[illegible] and is not a debtor entitled to [illegible] Act. (*Niyogi, J*) TIKA RA[illegible] 1938 N L J. 17=[illegible]

——(as amended by Act XV of 1936), Ss. 7 A, 8 (1) and 8 (2)—*Application for conciliation for debt—Notices issued to creditors—Creditors forming*

[illegible]

of the Board

Held, that the action of the Board was without juris-[illegible]

[illegible]

dure followed by the Board and respect of the minor's share. (*Bose, J*[illegible] HAJARIMAL *v.* GOVINDA TUKARA[illegible] 174 I.C. 962=10 R.N. 429=A I[illegible]

C. P. DEBT CONCILIATION ACT (1933), S. 8.

——S. 7-A—*Scope—Retrospective operation—Order of Conciliation Board discharging debt before introduction of S. 7-A—Jurisdiction of Board—If can be questioned in Civil Court in execution.*

S. 7-A of the C. P. Debt Conciliation Act has no retrospective operation. An order of the Debt Conciliation Board discharging a decree-holder's debt before the introduction of S. 7-A into the Act, can therefore be challenged by the decree-holder as being without jurisdiction in the Civil Court executing the decree. (*Niyogi, J.*) TIKA RAM *v.* GANPAT SAHAI. 1938 N L J. 17= A I.R. 1938 Nag. 373.

[illegible] *Delivery of movables to avoid attachment* [illegible] *judgment debt under S. 8 of the Act—found to have knowledge of proceedings—* [illegible] *ment-debtor to restoration of moveables.*

Where to avoid an attachment the judgment debtor delivered certain movables to the decree-holder and later on the debt was discharged under S. 8 of the Debt Conciliation Act, the proceedings of which, the decree holder was found to be cognizant of, the judgment-debtor is entitled to the restoration of the movables. (*Niyogi, J.*) AZIMMIYA *v.* NAYNYA. 1938 N.L J. 283.

——S. 8 (1)—*Notice under—Creditors who are omitted in the application under S. 4—Position of—Right to a decree.*

The notice contemplated in S. 8 (1) of the C. P. Debt Conciliation Act, presupposes that the debtor has disclosed the names of all his creditors. To construe that such a publication affects unknown creditors as well [illegible] to creditors whose names [illegible] plication under S 4. The [illegible] be treated as being lying [illegible] bt Conciliation Act. They [illegible] full decree. (*Niyogi, J.*) HAJI MOHAMAD *v.* HARBAJI. 1938 N.L J. 141.

——S 8 (1) and (2)—*Ambiguity in notice under*

[illegible] the service of [illegible] within which [illegible] ond the two [illegible] and where a [illegible] ntioned it was [illegible] time and that [illegible] be in effect a [illegible] the proviso to [illegible] for S. 8 (2) to [illegible] as discharged. [illegible] IAR *v.* HAR [illegible] 3 N.L J. 296. [illegible] Code, O. '21,

There was a decree in favour of two persons. Though the debtor applied to the Debt Conciliation [illegible]

has been declared satisfied. (*Gruer*, ... *v*. LALLOO DOMA.

——S. 9 (3)—*Order under—Effect*

The effect of an order under S. 9 ... validate the transaction but merely to shut out certain documents from evidence. Where therefore an order is made under S. 9 (3) excluding a mortgage deed from

——S. 16—*Jurisdiction—Civil Court sitting in execution—Power to question jurisdiction of Debt Conciliation Board to entertain application under S. 4.*

A Civil Court sitting in execution has power to inquire into the question whether the Debt Conciliation Board had jurisdiction to entertain and hear an application under S 4 of the Debt Conciliation Act made by a person who was not an agriculturist (*Niyogi, J.*) TIKA RAM *v*. GANPAT SAHAI 1938 N L J. 17= A.I R 1938 Nag 373.

——S 21 (as amended by Act XIV of 1935)—*Amendment, if retrospective.*

Looking at the question as a whole, it is clear that the amendment of S. 21 by Act XIV of 1935 is not merely procedural, but that it affects substantive rights and so in the absence of express words to that effect, it ought not to be applied to pending proceedings. (*Stone, C.J. and Bose, J.*) GANESH PRASAD *v* GOPAL 1938 N L J 101.

——S. 21—*Applicability—"Debt"—Meaning—Joint decree against several persons—Application under S. 4, by some only—Sale of property of others in execution—Confirmation of—If can be stayed.*

"Debt" in S. 21 of the C P. Debt Conciliation Act means a debt of the debtor who a ... Where in the case of a joint decree ... sons only one of them applies under ... come into operation, so as to stay t... the execution sale of the properties of the other judgment debtor who have not so applied under S 4 (*Niyogi, J.*) MADHO *v* RAMCHANDRA 178 I C 268=1938 N L J 60= A.I R 1938 Nag 273

——S 21—*Applicability—Insolvency proceedings, if could be stayed—'Other proceedings' in S. 21, meaning of.*

Proceedings in insolvency cannot be suspended under S 21 of the C P Debt Conciliation Act An insolvent after adjudication, though he might continue to be debtor for the purposes of those proceedings, cannot be a debtor for the purposes of the Debt Conciliation Act, as his property is vested in the insolvency Court which

execution sale.

...ce, the ...s judg- WAMAN ... 1938 N L J. 229.

——S. 21—*Certificate produced after confirmation of sale in execution—Effect of.*

By virtue of S 21 of the C. P. Debt Conciliation Act

Validity.

Under S 21 of the Debt Conciliation Act, the Civil Court is not bound to stay proceedings until it has been brought to its notice that there are proceedings pending before the Board by production of a certificate before it. In the absence of such certificate, it is open to the Court to continue the proceedings. Where, therefore, such certificate is not filed in the Court until the property has been sold in execution of a decree, the subsequent confirmation of the sale is not barred by any provision in the Act, and both the sale and confirmation of the sale are valid. (*Pollock and Digby, JJ.*) MAHTABSINGH *v*. KRISHNACHANDRA. 10 R N. 227= 172 I C. 592=A I.R 1938 Nag 109.

——S 21—*Scope—If controls O. 21, R. 92, C P. Code—"Proceedings"—Meaning of—Sale in execution held prior to debtor's application under S. 4—Confirmation of sale—If precluded*

The word "proceedings" in S. 21 of the C. P. Debt Conciliation Act must be understood as referring to proceedings in which the creditor and debtor, *i.e.*, the decree holder and the judgment debtor alone are concerned, and cannot be extended to cover the case of an auction purchaser in execution The term is not com... for confirma... ...e terms of ...y S 21 of ... does not preclude the executing Court from confirming an execution sale held prior to an application made by the debtor under S 4 of the Debt Conciliation Act (*Niyogi J*) MADHO *v* RAMCHANDRA 178 I C 268= 1938 N L J 60=A I R 1938 Nag 273.

CENTRAL PROVINCES LAND ALIENATION ACT (II OF 1916)—*Scope of—If prohibits only sale and not attachment*

If properties cannot be sold then it cannot be attached The Land Alienation Act when it prohibits sale prohibits attachment also (*Bose, J*) DEPUTY COMMISSIONER, HOSHANGABAD *v* FIROZ KHAN. 176 I C 163=11 R N 38=A I R 1938 Nag 504

——S 16—*Money decree against member of an ...—Prohibition against sale of his properties to attachment also*

... is not an end in itself, but is only an ... So it follows that where the Court is ...

nik, JJ.) DAULAT SHAH BAPU *v.* SARASWATI BAI.
173 I C. 877.
10 R N. 327=A I.R. 1938 Nag 281.

——S. 25—*Object of—Presentation of appeal to High Court by the Deputy Commissioner in person, if necessary*

The object of S. 25 of the C. P. Land Alienation Act is to bring to the notice of the Court an illegality in its decree or order and thus to save the property of certain class of persons. The Act does not contemplate that rules of procedure with reference to presentation, etc., are to be followed and as such all that is necessary is that the application under S. 25 (3) should arrive either by post or by personal presentation. It ...

——S 25 (2)—*Right to apply under when arises—Simple money decree—Attachment—Effect.*

In the case of a simple money decree, the order of attachment involves permanent alienation, mortgage or lease of land. So copies of such order should be sent to Deputy Commissioner under S. 25 (1) of the Land Alienation Act. If it is not sent, he can under S. 25 (2), apply within two months of his being informed of such order, the manner of his obtaini... immaterial (*Bose, J*) DEP... HOSHANGABAD *v* FIROZ KHAN
11 R N. 38=...

CENTRAL PROVINCES LAND REVENUE ACT (II OF 1917)—*Revision—Time—Long delay—Change in law and ignorance as to forum of revision—If grounds of for excusing.*

A delay in filing a revision cannot be excused on the ground of either a change in the law or ignorance on the part of the party as to the proper forum for the presentation of the revision in Collector's cases. (*N. J. Roughton, F.C.*) KISAN *v.* ADKU.
1938 N.L J. 127.

—— S 49 (1)—*Duty of Revenue Court under—Possession—Meaning and nature of.*

Where an applicant for mutation before a revenue Court has obtained lawful possession and title against the recorded proprietor, he is entitled to mutation, and the revenue Court is bound under S. 49 (1) of the Land Revenue Act to reco... another party ousts the ... lawful possession illegally which the applicant is not recognised by the revenue ... GOPIDAS *v.* SETH MISHR...

——S. 75 (1)—Muafi *re*...

revenue was foregone because the land was taken by a member of the proprietor's family in lieu of a proprietary share. At the next settlement the settlement officer recorded that it should continue in perpetuity "so long as the land remains in their own family and is not alienated." The *muafidar* transferred the land to a stranger by way of a usufructuary mortgage.

Held, that the conditions of the *muafi* had been ...

in possession, and the proprietor would be entitled to collect the revenue assessed upon the land.

Held, further, that on the owner resuming possession by redemption, the *muafi* would revive. (*Greenfield, F.C.*) SETH MEGHRAJ *v.* KASHIRAM.
1938 N L J. 52.

——S. 75 (3)—*Reference under by Civil Court—Revenue Courts' power to question propriety of.*

Under S. 75 (3) of the C. P. Land Revenue Act, when a reference is made by the Civil Court, the Revenue Courts must act upon it. It is not open to them to say that the reference is improper and that the point upon which the reference has been made is one to be decided by the Civil Court itself (*Greenfield, F.C.*) SETH ...SHIRAM. 1938 N L J. 52.

...nd 128—*Sale for arrears of land ... of notice to mortgagee not in possession ...—'Assigns' in S. 125, meaning of.*

A sale for non-payment of arrears of land revenue is not bad for failure to conform to the requirements of S. 128 of the C. P. Land Revenue Act, simply because a notice of demand had not been served on the mortgagee of the village as a defaulter. S. 125 in stating who are defaulters has included the 'assigns' of a person with whom the settlement was made, but by an explanation, has made it plain that 'assigns' includes a mort-...

——S. 138—*Sale proclamation in terms of—Sale, if free from encumbrances—Presumption.*

Under S. 138 of the Land Revenue Act, sale free of encumbrances is the rule and sale subject to encumbrances is an exception. When a Deputy Commissioner, signs a proclamation in terms of S. 138, it is unnecessary to pass an express order that the sale is to be free of encumbrances (*Pollock and Niyogi, JJ.*) SURAJDEEN *v.* ISHWARI PRASAD.
I L R. (1938) Nag. 550=1938 N L J. 342=
A I R 1938 Nag 554.

——S. 157—*Failure of co-sharer lambardar to pay Sadar lambardar—Payment by him to Government—Recovery under S 157—Remedy of patti lambardar.*

Where a patti lambardar who held her share free from assessment, failed to collect and pay the land ...

... bardar for her share of village profits. ...*J.*) THAKURSINGH *v.* MST PARWATIBAI.
1938 N L J. 292=A.I R. 1938 Nag 490.

...169 (1) (b) 220 (n)—*Order to file civil ... six months—Suit filed beyond that period ...tainable.*

Where under an order under S. 169 (1) (*b*) of the C. P. Land Revenue Act a party is asked to file a civil suit within six months but he fails to do so and files it beyond that period the Civil Court cannot entertain the suit, it being barred under S. 220 (*n*) Such party has to face the consequences under S. 169 (2) (*b*) and take his chance before Revenue Court (*Stone, C. J. and Puranik, J*) MADHORAO DINKARRAO *v* LAXMI-...
176 I C. 952=11 R N 95=176 I C. 952=
A I R. 1938 Nag 241.

—— ... 169 (1) and (b)—*Partition—Party asked to ... suit within six months—Case kept pending—*

C. P. LAND REVENUE ACT (1917), S 187.

Order sent to Deputy Commissioner for information—Order of Deputy Commissioner asking case to be filed—Which is the operative order.

In a partition proceeding before a competent Sub divisional Officer, he passed an order under S. 169 (1)(*b*) as follows: "*A* is asked to establish his rights in Civil Court by filing suits within six months from this date. Till then the case be kept pending Record forwarded to Deputy Commissioner for information" Deputy Commissioner endorsed on this as follows: "Case need not be kept pending so long. It be filed. Parties can re open it in due course." Question was if Deputy Commissioner's order was final or that of the Sub divisional Officer's and did the superior officer's endorsement convert the Sub-divisional Officer's order from S 169 (1) (*b*) to S. 169 (1) (*a*).

Held, that the order of the Sub divisi under S 169 (1) (*b*) was final and that the D missioner to whom the order was sent for had no right to vary it in any way so as under S 169 (1) (*a*), as the order was sent to him not by way of appeal or revision but in his administrative capacity only for information and the endorsement by Deputy Commissioner was his administrative act. (*Stone, C J, and Puranik, J*) MADHORAO DINKAR RAO *v* LAXMIBAI. 176 I.C 962 = 11 R N 95 = A.I.R. 1938 Nag 241.

———S. 187—*Lambardari Rules—Rr.* 11 (1) (b) (ii) *and* 11 (1) (b) (iii)—*Scope of.*

The qualifications for lambardarship laid down in

———Ss. 187 and 188—*Scope of—Respective duties of lambardar and sadar lambardar.*

S. 187 of the C. P. Land Revenue Act, lays a primary responsibility on the sadar lambardar to collect the land revenue from the lambardars and pay it to gov-

much of the land revenue as may be payable through him (*Pollock J*) THAKURSINGH *v* MST PARWATIBAI 1938 N L J. 292 = A I R 1938 Nag 490.

———S. 192—*Lambardar or mukkaddam—Fixing of remuneration under S. 192—Right* ... *period anterior to date of such fixing.*

In a suit for village profits, a lambardar dam is entitled to claim whether as plaintiff endant, remuneration for his services for prior to the year in which his remuneratic fixed by the Deputy Commissioner under the provisions of S 192 of the Land Revenue Act as are within the period of limitation (*Stone, C J and Bose, J*) MAHADEO *v*. JANARDAN. I L.R 1938 Nag 509 = 1938 N L J. 448

———Ss 202 and 220—*Bar of jurisdiction of Civil Court—Scope and extent*

S. 220 of the C. P. Land Revenue Act bars a Civil Court from entertaining any suit with reference to any question connected with or arising out of the powers under S 202. Where a plaintiff seeks to obtain damages for the breaches of certain conditions in a contract with reference to the lease of his forest, it is not a

C. P. LOCAL FUND AUDIT ACT, S. 10.

matter which the Revenue authority is empowered to decide under S. 202. The mere fact that the same set of facts give rise to a civil action for damages as well as to revenue proceedings under S. 202 does not confer jurisdiction upon the Revenue authorities to usurp the functions of Civil Courts. (*Bose, J.*) JAMSHED *v*. KUNJILAL. 1938 N L J. 392 = A.I.R. 1938 Nag 530.

———S 203—*Malguzar mortgaging his proprietary rights and house in* abadi—*Foreclosure—Mortgaged house, if exempt from attachment—Mortgagor's right to house site—Limits.*

A malguzar mortgaged his village which included his *sir* lands He also mortgaged his house in the *abadi*.

the *abadi* and as such the house was not attachable.

Held that the mortgagor was only entitled to a house site of reasonable dimensions in the *abadi* as a tenant and not to any particular site or house and hence the house was attachable. (*Bose, J*) RAMADHIN *v*. SHEODUTT. A I R 1938 Nag 544.

———S 203—*Obtaining of site for building house to live in—Right of transfer—Presumption.*

Where a man obtains land in order to build a residential house in a growing town, the ordinary presump-

———S 218 (4)—*Deputy Commissioner's power to refer to Civil Court for making award—Limits.*

S. 218 (4) of the C P Land Revenue Act requires that the compensation shall be calculated by the Deputy Commissioner (or if necessary by the Civil Court) as ... with the provisions of ...es not require that the strictly followed. A of the question of the his powers. (*Rough-* ... *v*. CHOUBEY MADAN MOHAN. 1938 N L J 326

———S. 218 (5)—*Order to furnish security prior to entering on land—If legal.*

S. 218 (5) of the C. P Land Revenue Act requires

CENTRAL PROVINCES LAND REVENUE MANUAL VOL. II, Page 43—*Instructions in—If has the force of law.*

The Central Provinces Land Revenue Manual contains mere executive instructions and they have not the force of law. Failure to observe the instructions does not amount to an illegality so as to invalidate a sale. (*Pollock and Niyogi, JJ*) SURAJDEEN *v*. ISHWARI PRASAD. I.L.R (1938) Nag. 550 = 1938 N L J 342 = A.I.R 1938 Nag 554

CENTRAL PROVINCES LOCAL FUND AUDIT ACT, Ss. 10 (1) and 8 (b) (c)—*Surcharge—Notice—Conditions necessary.*

C.P. LOCAL FUND AUDIT ACT, S 14.

Before a notice can be served under S. 10(1) of the C. P. Local Fund Audit
which fall under cls. (*b*) an
be satisfied that the loss ha
by gross negligence or m
Bose, J.) ATMARAM *v.*
P. 177 I
A.I R. 1938 Nag 422.

——S 14—*Application to Dt. Judge—When Procedure to be followed.*

When a person is surcharged under S. 10
under S 14 the right to apply to the Dt. Judge. The

decide one, and say that all are the same. (*Stone, C. J. and Bose, J.*) ATMARAM *v* ACCOUNTANT-GENERAL, C. P 177 I.C. 902=1938 N.L J. 220= A.I.R. 1938 Nag. 422.

CENTRAL PROVINCES LOCAL SELF-GOVERNMENT ACT (IV OF 1920), S 23 (1)—*Applicability to any market*

S. 23 (1), C. P. Local Self-Government Act, applies to any market which corresponds to the definition of market given in S. 2 (2) of the Act whatever it may happen to be called (*Bose, J.*) KRISHNARAO GOPALRAO *v.* SECRETARY OF STATE. 176 I.C. 736= 11 R.N. 75=A.I.R. 1938 Nag 188.

——S. 23 (1) and (3)—*Rights of owner of market—Notification under S. 23 (1) of C.P. Local Self Government Act—Rights of owner, if affected—Test—Remedy.*

In general, the owner of a market has a right to levy fees and tolls which are usually known as stallage, piccage, pennage and rent and no one can erect a stall on any portion of the land or otherwise claim exclusive occupation of it without a license from the owner. But *these rights can be curtailed in various ways one of* which is custom. The word 'control' as used in conno

tions from the bazaar, the jungle tank and wells lay outside the boundaries of the market.

——S. 23 (3)—*Who can sue under— Notification wh*

so
C.
un
if the prejudice is established. (*Bose, J*) KRISHNA RAO GOPALRAO *v.* SECRETARY OF STATE. 176 I C. 736=11 R.N. 75= A I.R. 1938 Nag. 188.

C. P. MONEY-LENDERS ACT (1934), S. 11.

——S 73 (2)—*Limitation under—Computation of* ... *for wrong-*

at one time
deprived of it
ition, a new
accrue in his
favour. In pursuance of a resolution, the Chairman
an employee in-
dispensed with.
uty Commissioner
who set aside the Chairman's order. The Deputy Commissioner's order was upheld by the Commissioner.

District Council. The employee filed a suit challenging the legality of the order of the Chairman as well as that of the Minister for Local Self-Government and prayed for damages for wrongful removal from service:

Held, that the period of limitation, *viz.*, six months prescribed by S. 73 (2) of the C P. Local Self-Government Act must be computed from the date of the Minister's order as the cause of action for the suit arose on the day on which the Minister passed his order which had the effect of making the Chairman's order final and effective (*Niyogi, J.*) DISTRICT COUNCIL OF SEONI *v.* NANHARIYARAM SHARMA. A.I R. 1938 Nag. 499.

CENTRAL
ACT (XII
1937), S.
"loan"—M
1934—Preliminary decree and final decree prior to amendment—If can be re-opened—Retrospective operation.

As from 19-3 1937, the C. P. Money-Lenders Act (as amended in 1937) applies to mortgage transactions made with money-lenders, as a mortgage would clearly fall within the term "loan", although the *Act of 1934*, before its amendment was not applicable to a loan

hen the suit was brought. The Amending
is not retrospective in operation and does
transactions prior to it. (*Stone, C.J and*
BHAGWANTRAO *v.* DAMODAR.
I L.R (1938) Nag. 91=20 N.L J. 285= A I R. 1938 Nag. 112.

——S. 9—*Total interest paid, if relevant.*

According to S. 9 of the Central Provinces Money-Lenders Act, no Court shall decree on account of
erest a sum greater than the principal of
he fact that the total interest paid up to
ount to more than the principal, is quite
point. (*Gruer, J.*) RAMCHANDRA *v*
1938 N L J. 361.

——S 11—*Applicability—Conditions— Relationship*

that the decree holder is a money lender and that the transaction giving rise to the decree was a loan as defined by the Act. It is not enough that the relationship of decree holder and judgment-debtor exists between

C. P. MONEY-LENDERS ACT (1934), S 11.

the parties. A debt in respect
of cotton is not a loan under t
Puranik, J.) GULABCHAND
& CO.

——S. 11—*Construction*—
cation for instalments after
tion sale—Competency—S. 11, if controls O 21, R. 92, C. P. Code.

S. 11 of the Money-Lenders' Act has to be construed strictly, as it restricts existing rights under the law, and should not be allowed to override the provisions of the existing law, i e, the provisions of O. 21, R 92, C. P. Code. S 11 cannot be interpreted so as to permit of an application for instalments being entertained after the bid at an auction sale in execution of a decree has been accepted and when the confirmation of the sale has become inevitable Once the bid has been accepted, the Court has to confirm the sale under O. 21, R. 92, C.
P Code, unless good cause is s
or 91 of O. 21. (*Roughton, F.*
BHANU.

CENTRAL PROVINCES
ACT (II OF 1922), S 25 (1).
of Secretary to Civil Station Su
tected post

palities Act. (*D P. Mishra*) CIVIL STATION SUB-COMMITTEE, NAGPUR *v.* G. T. MESHRAM.
1938 N.L J. 34

against their dismissal by Municipal Committees under R. 2 (1) (*a*) of the rules framed under S 25 (7) of the Act. (*D P. Mishra.*) CIVIL STATION SUB COMMITTEE, NAGPUR *v.* G. T. MESHRAM.
1938 N L J. 34

——S 48—*Applicability — Enhancement wit*
powers but procedure irregular—Suit to recover
collected

It is true that if a Municipal Committee exercises powers which it did not possess,it should not be regarded as acting in pursuance of the statute governing its powers, and its acts should not be regarded as being those done under the statute But there is a
between a case when a corporate body exercise
which is wholly absent and a case where it
but it exercises it illegally or with material irregularity. In the former case the Municipal Committee's act from beginning to end is illegal, whereas in the latter case the act is quite legal in the beginning but becomes illegal in the end Where the Municipal Committee has power to enhance the tax on animals brought to slaughter house and follows the procedure laid down in S 68, C P. Municipalities Act, but in doing so it lapses into an

A.I.R. 1938 Nag 455.

——S. 58—*Scope—If confers a power of review.*

C. P. TENANCY ACT (1898), S. 24.

evident that the Act has no provision for review (*Mishra*) MUNICIPAL COMMITTEE, NAGPUR *v* WAGALWAR
1938 N L J. 205.

——S. 66, Rules under, R. 12 (a)—*Non domestic purpose—Test—Water used by inpatients in doctor's house—Nature of user.*

The true test to determine whether water is used for non-domestic purpose is to see whether the water is directly used for any trade or business If the trade or business requires for its prosecution the direct use of water, that use is clearly non domestic, but when the

imself uses
temporarily
connexion
oor patients
residing in the building, is not used for any purpose other than domestic purpose. The water does not cease to be domestically used, only because it is used by the

——S. 83—*Reference to High Court—When could be availed of.*

The advantage of the provisions of S 83 of C P. Municipalities Act could be taken only by Government

CENTRAL PROVINCES REDUCTION OF INTEREST ACT (XXXII OF 1936)—*Scope—If retrospective*

A.I.R. 1938 Nag. 112.

CENTRAL PROVINCES TENANCY ACT (XI OF 1898), Ss 11 and 13 — *Admission of two to tenancy—Tenancy not divided by metes and bounds—Payment of rent jointly—Death of one of the tenants—Rights of landlord.*

Where an owner of property carves a lesser interest,
tenancy, out of his rights, the reversion, of
tains in him, but when the reversion falls in,
transfer of title from the tenant to himself.
ndlord chooses to let in two people on the
each a right to uninterrupted possession of

——S 24 (2)—*Notice under—Error in description of khasra numbers—Effect—If renders notice void.*

C. P. TENANCY ACT (1898), S. 30.

A notice under S. 24 (2) of the C. P. Tenancy Act is not void on the ground that there is an error in describing a khasra number and in stating its area. There must be a substantial error such as has in fact misled or was likely to mislead the tenant, otherwise the defect or error is not fatal. (*Greenfield, F.C.*) LACHHMAN *v.* SETH PARTAPCHAND. 20 N L J. 274.

——S. 30—*Scope—Duty of Revenue Officer to ascertain improvements and determine value—Tenant—If bound to put forward claim.*

PRASAD 20 N L J. 268.

of Court

The policy of the C. P. Tenancy Act is to secure and preserve to a proprietor whose proprietary rights are transferred a right of occupancy in his *sir* lan[illegible] policy cannot be defeated by the proprietor [illegible] gift of his *sir* land and then as part of the sa[illegible] saction surrendering his occupancy right to th[illegible] Whenever it appears that a transaction is voi[illegible] trary to the policy of a statute, the Court should take notice of the nullity and proceed accordingly. (*Stone, C.J.*) SIDNATH *v.* JASODA BAI.
10 R.N. 287=173 I C 145(2)=
A I R. 1938 Nag. 185

——S. 2 (6) (d)—*Improvement—House built in abadi—If amounts to—House built in holding when amounts to.*

Where an occupancy tenant bu[illegible] *abadi* though with a view to live [illegible]

N L.J. 136

——S. 5—*Devise in contravention of—Devisee taking possession—Dispute between co-devisees—Validity of will, if can be raised.*

A will violating the provisions of S. 5 of the C. P. Tenancy Act though is void in [illegible] taken possession under the will [illegible] will, he cannot in a suit by a c[illegible] will plead the invalidity of [illegible] NAROTTAMDAS *v.* GURUPRASA[illegible]

C. P. TENANCY ACT (1920), S. 6.

——Ss. 6 and 105—*Absolute occupancy holding pre empted by landlord—Mortgagee—Suit by impleading landlord pre-emptor—Pre emptor discharged—Decree—Mortgagee purchasing holding in execution—Suit by to recover possession against landlord—Competency—Right to pre-emption money.*

The substantive right of pre-emption given to the landlord under S. 6 (4) (*c*) is independent of the right of any mortgagee of the tenant right and is paramount. In addition to this the value of the absolute occupancy

[illegible] tion to direct how the sum deposited by the landlord [illegible] An absolute occupancy tenant's [illegible] xecution of money-decree passed [illegible] S. 6 the property was pre empted by the landlord at price fixed under S. 6 (5) free of all

But the mortgagee could recover the money deposited in Court which was only a security substituted for land. And the fact that he had failed to ask for a decree against the pre-emption price

——S. 6—*Mortgage—Purchase of mortgaged holding—Rights and liabilities of—Failure to redeem mortgage—Pre-emption by landlord—Effect on rights of mortgage.*

The purchaser of the mortgaged property is not personally liable to pay anything in excess of the value of the mortgaged property. If the purchaser of the

[illegible]
10 R N 413=A I R. 1938 Nag. 80.

——S. 6—*Scope—Notice to incumbrancer—If necessary.*

S 6 does not provide for notice to any incumbrancer

C. P. TENANCY ACT (1920), S. 6.

BONDRU v. SURAJMAL KANHAIY...
I L R (1938) Nag. 2
10 R N. 413 = A ...

——S 6—*Transfer of absolute ...*
No notice to landlord—Landlord
avoid it—Sale in execution of rent decree—Transferee if affected.

A transfer of an absolute occupancy holding is valid unless and until it is avoided by the landlord in the manner and to the extent provided by S. 6 of the C P. Tenancy Act. The sale of such a holding in execution of rent decrees to which the transferee was not a party when he was the tenant of the holding does not bind him. The transferee obtains a good title and becomes a tenant from the date of transfer. (*Grille and*

...

the pre emption price, though it is charged with the rental arrears the landlord could not proceed against the money simply by obtaining an order from the Revenue Court to hand it over to him. He must first execute the decree for arrears already obtained and should obtain a decree for arrears for which no decree had been obtained. He must proce... rights against the money in the same ... enforce them against the land.
TODAR v. RAMBHADRA

——Ss. 12 and 89—*Transfer in S. 12 if includes surrender.*

'Transfer' in S. 12 does not include the 'surrender' referred to in S 89 of the C. P Tenancy Act (Per *Stone, C J*) (*Stone, C J, Bose and Digby, JJ.*)
ASARAM v LUDESHWA...
11 R N 109 = ...

——S. 12 (4)—*Scop...*
one tenant in favour of o...
If prohibited.

S. 12 prohibits certain ... body of the section A dee... occupancy tenant for valua... of another claiming a right ... ed tenant in settlement of ... transfer and therefore th... S 12 Hence such docum... to registration (*Bose and* ...
BAI v SHRI DEO RADHA ...
176 I C. 57 = 11 R N. 24 = A I R 1938 Nag 30.

——S 49—*Scope and object of—Device to evade law—Duty of Court.*

Per *Stone, C. J*—It is the policy of the law to prevent the land-working classes being driven into the state of landless proletariates so far as may be, and accordingly it is provided by S. 49, C P. Tenancy Act, that alienation of *sir* land, that is homefarm land in cultivation, shall be ineffective unless the sanction of the appropriate official has first been obtained It is of the utmost importance that this safeguard should be maintained in full force and effect. It is likewise desirable that collusive

...

notice of the parties exactly what their bargain amounts to under the law and if they have understood the position

C. P. TENANCY ACT (1920), S. 89.

...

not the sale of the *sir* but the arrangement or device which attempts to evade the provisions of the Act.

Per *Digby, J.*—Where a surrender and a sale deed of proprietary right are both executed on the same date and it has been arranged to make the surrender before the sale deed is executed, the surrender deed is the execution of "device which is void and illegal" (*Stone, C.J., Bose and Digby, JJ.*) ASARAM v. LUDESHWAR.
177 I C 6 = 11 R N. 109 =
A I R. 1938 Nag 335 (F B).

... *urrender found illegal—Surrenderee, ... to set aside surrender—Powers of*

... sells his proprietary rights in a ... surrenders his holding of *sir* lands in ... quired occupancy rights, and the surrender was illegal, the surrenderee holds the surrendered land for the benefit of surrenderor—a *cestui que trust*—because surrenderee is supposed to hold the lands burdened with an obligation in the nature of trust. In a suit to set aside the surrender Court can not only declare the surrenderee as a sort of trustee but can place the ... they ought to be. (*Stone, C.J.*
ASARAM v LUDESHWAR.
177 I C. 6 = 11 R N 109 =
A.I R. 1938 Nag 335 (F B).

——S. 49—*Surrender—Suit to set aside illegal surrender—Surrenderee holding as quasi-trustee—Limitation—Law applicable.*

Per *Stone, C J and Vivian Bose, J*—In a suit to set aside surrender which was found to be illegal on

...

——S 63 A (3)—*Right in the diverted holding—Extent—Building of a house—Mortgagee of house placed in possession in execution of his decree—Rights of the occupancy tenant.*

Although S 63-A of the C. P. Tenancy Act retains the rights of the tenant in the diverted holding it does not follow that the tenant's rights as such continue to subsist in the object which has been the mode of diversion of the holding Where an occupancy tenant builds a house and a mortgagee of it is placed in possession of it in execution of his mortgage decree, the occupancy tenant retains only the right to the mere site of the ... d it will not become available until the house is ... (*G P Burton, R. M*) MT BUDHANBAI ... J. 1938 N.L J 136

... 89—*Compliance—Deed of relinquishment by ... tenant in favour of landlord temple—Ten... panch of temple and holding deed on behalf of ... f temple—If sufficient delivery*

An occupancy tenant executed a deed of relinquishment in favour of the landlord temple. The tenant wa...

C. P. TENANCY ACT (1920), S. 89.

one of the panchas of the temple and therefore *prima facie* had authority to hold the deed on behalf of the trustees of the temple till they were in a position to consider the matter.

Held, that this amounted to a sufficient delivery of the deed and hence the provisions of S. 89 were satisfied. (*Bose and Puranik, JJ.*) SAHAUDRA BAI *v.* SHRI DEO RADHA BALLABHJI. 176 I C. 57 = 11 R N. 24 = A.I.R. 1938 Nag. 30.

——S 89—*Surrender by tenant in favour of land lord—Effect of*

When there is a determination of the tenancy by a

ACT, SS

——Sch

exclusive

Art 1 of Sch II has no application to a co-tenant claiming to be in exclusive possession of a holding. The ordinary law of limitation applies to such a case. (*Niyogi, J*) RAMJI *v.* MADKI. 173 I.C 103 = 10 R N. 278 = A.I.R. 1938 Nag. 89.

——Sch. II, Art 1—*Intention—Attaining quick finality in revenue record.*

Per *Digby, J*—The intentio Act is evidently to secure fre regarding tenancy land, and to claims stirred up in villag finality in the revenue records. (*Stone, C.J., Bose and Digby, JJ.*) ASARAM *v.* LUDHESHWAR. 177 I C. 6 = 11 R N. 109 = A I R. [illegible]

CERTIORARI—*Writ of—Pow issue—Regular exercise of* quasi *forcement—Issue of writs of* cer *for the purpose of*

The power of the H *rari* and prohibition t *quasi*-judicial powers unquestioned. (*Panc* BENGAL COURT OF I.L.R (19

——*Writ of—Pr Failure of Election that the election has be*

that the rejection of certain votes by the election officer

47 L.W. 338 =

CHARITABLE AND RELIGIOUS TRUSTS ACT (1920), S. 3.

——Writ of—Revenue Court—Suit by holder of office of village blacksmith for possession of inam land attached to office alienated by previous holder—Decree by Revenue Court—If without jurisdiction—Application for writ of *certiorari* to High Court—Competency. *See* MADRAS HEREDITARY VILLAGE OFFICES ACT, SS. 13 AND 21. (1938) 1 M.L.J. 406.

where the purpose of the trust is partly public and partly private. In every case, the real substance of the trust and the primary intention of the creator of the trust have to be looked at. If the intention of the creator was the creation of a trust for a public purpose, the dedication in favour of the poor relations of creator who are class- ... in the neighbourhood will ... re of the trust. (*Guha and* ... LI CHAUDHURI *v.* TABU- ... 0 R.C. 522 = 173 I.C. 453 = A.I.R. 1937 Cal. 313.

——S 3—*Construction—"Trust... for a public purpose of a charitable or religious nature"—Meaning of—Deed or will creating trust—Part of pro- ... r private purposes—Specified ... r public purposes—If falls*

... napplicable to a trust merely because a small sum is reserved for purposes which may

3 of the ... muta- ... nnot be ... m such ... A RAM ... 1054 = ... 800 = ... 467 = A I R. 1938 Oudh 262.

CHARITABLE AND RELIGIOUS TRUSTS ACT (1920), S. 3.

the trust, the trust property, and the beneficiaries must

direct.

Under Cl 2 to S 3, the Court is enabled to direct the examination and audit of the accounts in hands the funds or the properties of the quite apart from whether he is a tru (*Agarwala and Varma, JJ*) RAMSAROOP ESHWAR DAS. 175 I C 636=4 11 R P. 5=19 Pat L T 639=A I R 1938 Pat 280

——S 5 (3) and (4)—*Jurisdiction of District Judge under—Limits—Decision as to nature of trust—When justified.*

S. 5 (4) of the Charitable and Religious Trusts Act in terms gives the Court of the District Judge jurisdiction to decide, under certain circumstances, the question whether a trust is one to which the Act applies. When either its existence or its being a trust to which the Act applies, is denied, and no undertaking as contemplated by sub-r. (3) is given, the District Judge is exercising a jurisdiction vested in him, if he decides as to the nature of the trust. (*Zia-ul-Hasan and Yorke, JJ.*) GANGA RAM JAITLEY *v.* J N JAITLEY 178 I C 167=1938 O W N 1054=1938 O A 800=1938 A.W R. (C C) 85=1938 O L R 467=A I.R 1938 Oudh 262

CHILD

1929) —

case for inquiry—Legality.

S 10 of the Child Marriage Restraint Act requires a Court taking cognizance of an offence under the Act either itself to make an inquiry under S. 202, Cr P. Code, or to direct a Magistrate of the 1st class subordinate to it to make such an inquiry A transfer of such a case by a District Magistrate to a Sub-Divisional Magistrate for disposal without any such inquiry is therefore illegal. (*Lakshmana Rao, J.*) SIVAGAMI AMMAL *v* MUTHU IYER. 48 L.W. 774

——S. 5—*Preliminary acts—If punishable.*

S. 5 of the Child Marriage Restraint Act takes

HAIDER *v* SYED ISSA

39 Cr I

——S. 6—*Scope of—Promot outside British India—If punish*

S. 6 of the Child Marriage Res only to a marriage that is

CHOTA NAGPUR TENANCY ACT (1908), S. 14.

——S. 9—*Complaint—Case under S. 5 sent by Magistrate to Police Officer for investigation—Letter by*

Hence, when, such case is forwarded to an Assistant Superintendent of Police for investigation a letter written

CHIT FUND—Stakeholder taking mortgage security bond from successful bidders—Effect of—Trust—Insolvency of stakeholder and sale of his properties by Receiver—Suit by purchaser on security bonds—Maintainability. *See* TRUSTS ACT S. 59.

1938 M W.N 523.

CHOTA NAGPUR ENCUMBERED ESTATES ACT (VI OF 1876), S 12 A—*Applicability—Execution sale—Sanction of Commissioner—Necessity.*

A sale in execution of a decree is an alienation within the meaning of S 12 A of the Chota Nagpur Encumbered Estates Act and an execution sale held without the sanction of the Commissioner is void. (*Wort and Agarwala, JJ*) MAHADEO PRASAD *v* BHAGWAT NARAIN 177 I C 810=5 B R 18=11 R P 187=1938 P W.N 400=A I R 1938 Pat 427.

Under the Chota Nagpur Tenancy Act non occupancy rights can arise only in the case of a holding which means "parcel or parcels of land" which is the subject matter of a separate tenancy and not an undivided share Hence a person who has been inducted on the land by one of the co-sharer thicadars without the consent of others is not a non occupancy raiyat (*Wort and Manohar Lall, JJ*) NARAYAN RAM SAHU *v.* KARTIC SINGH 174 I C 207=4 B R 411=10 R P 487=A I R 1938 Pat 113.

——S 14—*Scope—Tenure-holder creating zarpeshgi—Death of tenure holder without heirs—Resumption by by latter*

a person
On the
landlord

BHAIRODAYAL SAHU *v.* JAGESHWAR SAHU 174 I.C. 627=4 B.R. 464=10 R P 540=A.I.R 1938 Pat.

——S 64—Applicability—Land held by occupancy raiyat for purpose of cultivation—Bulk of land brought under cultivation—Trespasser reclaiming part of area

on the part of the Deputy Commissioner. It would appear, therefore, more natural to say that as there is not in the strict sense a cause of action under S 74 (*a*) but merely a right to invoke an administrative operation which may by either the landlord or the tenant incapable of application Even assumi does apply, the right of application

the application should be made and accordingly from which the period of limitation would run On the contrary the section makes the right of applying conditional on a state of facts, namely where a tenancy has been vacated. While that condition exists there is no ground for fixing on any specific moment of time. (*Lord Wright*) JAGADISH CHANDRA DEO DHABAL DEB *v.* SANTAL. 17 Pat 110=172 I C 649= 19 Pat L T 74=1938 O L R 53= =1938 P W N 107=1938 A L R 71=4 B R 234= (1938) O W.N

——S. 139 *meaning of.*

What the Legislature intended to provide for in S.139

——S 190 (1)—*Applicability and scope—Omission*

a mere formality; nor can it be implied from the mere fact that the Court allows execution to proceed. The section expressly requires the permission to be granted ... not given as ... URAON *v.* ... Pat 464. ... *—Applica-* ... *on ground*

... Chota Nagpur Tenancy Act applies to ... ud in conducting the sale, but has no

omission to issue the notice required (*Courtney-Terrell, C. J. and Madan, J.*) BARAIK RAM GOVIND SINGH *v.* CHOWRA URAON. 16 Pat. 632=1938 P.W N 78= 173 I.C. 644=4 B R. 315=19 Pat L T. 259= 10 B P. 430=A I.R 1938 Pat 97.

... CODE (V OF 1908), S. 2 ... gra Tenancy Act. *See* AGRA AND 3. CL. (14) 1938 A L J 63

—Order that cross objection ... iates is appealable as a decree ... em that an order that an appeal abates is also appealable as a decree and if so there is no reason why an order that the cross-objection abates should not be held to be a decree for the same reasons. (*Stone, C.J and Clarke, J.*) PURUSHOTTAMDAS *v.* DEOKA RAN. 1938 N L J. 399.

——S. 2 (2)—*Decree—Appeal memo. stamped after limitation, under an extension of time—Dismissal as time barred.*

Where an appeal presented with insufficient stamp was after the period of limitation stamped with the full ... me by the Court, a dismissal of ... d is a decree within the meaning ... Code. (*Pollock, J*) SONBA ... RIGUES. 177 I C 505= ... 11 R.N. 142=1938 N L J. 155= A I.R. 1938 Nag. 322.

... *"Decree"—Dismissal of suit* ... *in default of* ... *ixed time—*

... n-payment of deficient court-fee is a decree as defined by S. 2 (2) C.

C. P. CODE (1908), S 2.

ferred upon it by O. 41, Rr. 32 and 33, C. P. Code. If the court fee is paid within the extended time given by the trial Court, there is sufficient compliance with the order for payment of court-fee and the plaint cannot be regarded as having been rejected under the order of the trial Court. (*Ganga Nath, J.*) KASHI KURMI *v.* BANSRAJ KURMI. 174 I C. 298=10 R A. 564=
1938 A L R 262=1937 A.L J. 1346=
1938 A.W R 13 (H C.)=A I R 1938 All. 150.

——Ss 2 (2) and 47—*Decree*—*J*
ment-debtor and decree holder
Order—Appeal.

The case of a judgment debtor w
with the decree holder auction-pu
S. 47 and an order passed against t
is a decree under S. 2 (2) and a
(*Stone, C. J. and Puranik, J.*)
GANPATRAO YADORAO. 177 I C. 643=11 R N. 155=
A I R 1938 Nag 212.

——S. 2 (2)—"*Decree*"—*Memorandum of appeal—Rejection for non-compliance with O.* 41, *R.* 1—*Appeal-*

accordance with O 41, R. 1 is appealable. Only in

——S 2 (2)—"*Decree*"—*Order by appellate Court under O.* 41, *R.* 5 *refusing to stay execution—Appealability—Ss* 47 *and* 96

—*Appealability*

A lambardar brought a suit against certain persons for recovery of the amount of revenue paid by him to the

——S 2 (2)—"*Decree*"—*Order rejecting appeal for non-payment of additional court fee—Appealability—O* 43, *R.* 1.

No appeal lies aga
randum of appeal for
fee demanded Such
ed by S. 2 (2), C. P.
under O 43, R. 1,
party is by way of re

C. P. CODE (1908), S. 3.

Gruer, JJ.) BALAJI DHUMNAJI *v.* MST. MUKTABAI.
I.L R. 1938 Nag 106=173 I C. 329=
10 R N 298=1938 N.L J 1=
A I R. 1938 Nag. 122 (F B.).

——S 2 (2)—*Preliminary decree—What amounts to—Partition decree*

Where a compromise provided for a division of the property according to the respective share of the parties as per their degree of relationship and in effect not only

——S. 2 (11)—*Executor—When becomes legal representative.*

Ordinarily a grant of probate refers back to the date of the death of the deceased and the executors become
om the time of the death.
KANHAIYA LAL
1938 A M.L J. 91.

representatives "—Meaning of—Joint Hindu family—Death of manager—Surviving
ives. *See* NEGOTIA-
40 Bom L R 964.
entative—Mere inter-

estate of a deceased
ddler the status of a
) BALKISAN *v* MST.
531=11 R.N 146=
1938 N L J. 168=A I R. 1938 Nag 298.

——S 2 (11)—*Legal representative—Scope of the definition—If restricted to legal heir—Co-parcener*
If covered by defini-

ve under S 2 (11),
a person should be
The last portion
rer the case of a co
survivorship on the
r is su d in a repre-
J) GYAN DATT
307=10 R A 560=
=1938 A L J. 56=
1938 A W R (H C) 58=A I R 1938 All 163.

——S 2 (11)—*Scope—If controls O* 22, *R* 5—*Intermeddler—Right to be impleaded in preference to true*

person claim to be the
deceased, the Court under
is required to decide which of
t the legal representative An
e, though a legal representa-
), C P Code, is not entitled
who is found to be the true
rwala, J) SURAJ PRASAD
1938 P.W.N 803.

gainst wrong legal representative—Decree—Binding nature of—Duty of plaintiff in such cases *See* C P CODE, S 50 40 P L R. 25.

——(Second Amendment Act IX of 1937), S 3

C. P. CODE (1908), S. 9.

——S. 9—*Bar of suit—Suit of civil nat- Service in temple and prayer—Right to stand in cular position—Suit to declare—Maintainability.*

It is unquestionable that the Civil Courts in have no ecclesiastical jurisdiction and that they cannot decide questions of ritual except in so far as the decision of such questions is a nec to the decision of civil rights. It is that a right to worship in a particular right and that a right to perform which obligations and emoluments a civil right It has been recognise adjudicating on a right of worship or a right to a religious office not infrequently is obliged to decide incidentally questions of ritual; but it follows that the Court will not, on a mere pretence that a right to worship has been infringed, arrogate to itself a jurisdiction which it does not possess to prescribe forms of prayer, rights to religious precedence and questions of that nature. The Civil Courts have neither the prayer nor the duty to attempt to draft a prayer book for a temple. A Civil Court cannot also be required to declare the rights of persons to stand in any particular show of the congregation. (*Wadsworth, J*) APPADORAI AYYANGAR *v.* ANNANGARACHARIAR. 1938 M W.N 1206= 48 L.W. 722.

——S. 9—*Jurisdiction of Civil Court—Suit to declare right to first honours at a festival in a temple—Maintainability*

A claim to first honours at a festival in a temple is only a right to a dignity or precedence and cannot be regarded as a right of civil nature, whether it is in a temple or elsewhere so long as it was not attached to an office. A suit in respect of such a right is not maintainable. (*Pandrang Row and Abdul Rahman, JJ*) THATHACHARIAR *v* SRINIVASARAGHAVA IYENGAR. 173 I C 986=10 R M 654=47 L.W 459= 1938 M W.N 18 (2)=A.I R 1938 Mad. 334= (1938) 1 M L J. 174.

——S 9—*Special tribunal appointed by statute—Civil Court's jurisdiction.*

Where a special tribunal, out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily

——S. 10—*Applicability—Court in which instituted suit pending—If should be cc grant relief claimed in later suit—"Relief If refer to earlier suit or later suit*

For the application of S. 10, C. P. Code, it is necessary that the Court in which previously instituted suit is pending must be a Court of jurisdiction competent to grant the relief claimed in the subsequent suit. The wo sui (P Ve

Code has reference to the entire subject-matter in controversy between the parties, and is not equivalent to 'any of the questions in issue'. The section does not bar the trial of a suit for rent for a period subsequent to that included in the previously instituted suit which is

C. P. CODE (1908), S. 11.

——S 10 (as amended by Government of Burma Adaptation of Laws Order, 1937)—*Retrospective British Burma to stay suits pendency of suits founded on*

the Adaptation of ish Burma have no ... by reason of the pendency of suits founded on the same cause of action in British India. The amendment to S. 10 being an alteration in the form of procedure has a retrospective effect. (*Roberts, C.J., Mya Bu and Dunkley, JJ.*) ARUNACHALAM CHETTYAR *v.* VALLIAPPA CHETTYAR. 1938 Rang.L R. 176=175 I.C. 275= 10 R R. 474=A.I.R. 1938 Rang. 130 (F.B.).

——S. 11.

——S. 11—*Adverse finding on one issue against successful party—If* res judicata.

Singh, J SAHI.

provision of the Income-tax Act. (*Leach, C.J., Varadachariar and King, JJ.*) TRICHY TENNORE H. P. FUND, LTD. *v.* COMMISSIONER OF INCOME-TAX, MADRAS. I L R 1938 Mad. 183= 1938 M.W.N. 171=173 I.C. 998=10 R M. 648=

C. P. CODE (1908), S. 11.

47 L W. 24=A.I R. 1938 Mad. 148= (1938) 1 M.L J. 130 (F B.).

——S. 11—Applicability—Foreign judgment—*Res judicata*—Conditions of. *See* C. P. CODE, S. 13. 40 Bom L.R. 77.

——S 11—*Applicability—Issues.*

Per *Bhide, J*—S. 11, C. P. Code, applies not only to

fact that the procedure then in force was of summary character is immaterial for the purposes of S. 11, C P. Code (*Young, C.J, Bhide and Din Mohammad, JJ*) MASJID SHAHID GANJ *v.* SHIROMANI GURDWARA PARBANDHAK COMMITTEE, AMRITSAR

175 I C. 945=11 R L 91= 40 P L R 319=A I R 1938 Lah. 369 (F.B).

——S 11—*Arbitration proceedings—Award filed under Arbitration Act*—Res judicata.

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42 C.W N. 367

——S. 11—*Causes of action different—Decision when may become* res judicata.

Section 11 does not require that the causes of action in both the suits should be the same for the application of the rule of *res judicata*. The causes of action may be different or the subject matter may be different, but if the issue involved in is the same and if it was directly and su issue in the former case between the sa between parties under whom they or any of them claim, litigating under the same title, the decision of such an issue in the former case will operate as *res judicata* provided the other conditions laid down in S. 11 are satisfied (*Stone, C J and Puranik, J*) SITABAI *v* HARI I L R 1938 Nag 496= A I R 1938 Nag 401.

——S 11—*Cause of action, different—Prior suit on the footing that a release was of no legal effect—Subsequent suit for damages for breach of covenant of title contained in the same release.*

The plaintiff obtained a release from the Official Assignee in respect of an insolvent's property. But a mortgagee of the property brought it to sale and it v stranger Thereupon the plaintiff Assignee for a refund of sum paid to him as consideration for the release on the ground that the release was of no legal effect But it was dismissed The present suit was brought by the plaintiff against the Official Assignee, for damages for breach of covenant of title contained in the deed of release On a plea that the later suit is barred by *res judicata*,

Held, that the causes of action in the two suits were entirely different and that the second suit was not barred by the rule of *res judicata* (*Leach, C J and*

C. P. CODE (1908), S. 11.

——S. 11, O. 2, R. 2—*Cause of action distinct—Gift of certain property to wife in lieu of dower—Widow remarrying after husband's death—Suit for pre emption by husband's brother dismissed—Subsequent suit for declaration of title to property on ground of remarriage of widow and for avoidance of gift—If barred.*

A Mahomedan gifted certain property to

vious suit what the husband had done in relation to the property and as in the subsequent suit he was basing his right of ownership on what had been done by the widow herself, the reliefs in the two suits were based on two separate causes of action and the subsequent suit was not barred either under S 11 or under O 2, R 2.

Held, further, that the plaintiff was debarred from challenging the gift in the subsequent suit as by bringing the suit for pre-emption he should be taken to have transaction in the eye of the law. th. 460, Foll. (*Din Mohammad, J.*) HATUN *v* HAYAT KHAN.

40 P.L R. 794=A.I.R. 1938 Lah. 492.

——S. 11—*Co defendants—Applicability of* res judicata—*Conditions necessary.*

The plea of *res judicata* can prevail, even if the contesting parties in the subsequent suit or those through whom they claim were ranged as co-defendants in the previous suit. But before this plea can prevail, three conditions are necessary to be fulfilled —(1) there must de this conflict in e claims , and (3) must have been finally decided. Where in a suit by the plaintiff claiming tenancy rights against defendants 1 and 2, who asserted priority over both the plaintiff and the defendants was impleaded as defendant No 3, and the Court dismissed the suit on account of the finding that *X* was entitled to succeed to the tenancy rights in suit in preference to both the plaintiff and the defendants, all the above three conditions are fulfilled and the question of *X's* title to succeed to the tenancy rights is, therefore, *res judicata* and cannot be re-opened in a subsequent suit by *X* against defendants 1 and 2 The fact that former suit was dismissed as against defendants 1 and

40 P L R 1030

——S 11—*Co defendants—Decision, when* res judicata

To establish *res judicata* between co defendants it should be established that there was conflict of interests between co-defendants, that it was necessary to decide that conflict in order to give plaintiff the relief which he claimed, that the question between the co-defendants was finally decided. A I.R. 1931 P.C. 114, Rel on In a suit by *K* for partition against *J* and *X*, *J* who was the entire property did not put in and it was decided that *K* was entitled hare in accordance with a parti Thereafter *X* put in applica

their shares under a different pedigree table, whereupon *J* brought a suit for a declaration that *X* would be entitled to those shares only which were in accordance with the pedigree table relied on in *K's* suit, which fact being disputed by *X*, *J* claimed that that point was *res judicata* as between *J* and *X* both being co defendants in *K's* suit.

Per Bhide and Dalip Singh JJ. Skemp, J., Contra. -*Held*, that the question of preference between the two

not *res judicata* in favour of *J* in his suit against *X*. (*Bhide, J., on difference between Dalip Singh and Skemp, JJ.*) RURA *v* BANTA.

40 P.L.R. 600 = A.I.R. 1938 Lah 227.

——**S. 11**—*Co defendants*—Res judicata—*Absence of conflict of interests between defendants* inter se.

If there is no conflict of interests between the defendants *inter se*, and therefore no question to be decided between them in order to give the plaintiff relief in the suit, there can be no *res judicata* between co-defendants (*Leach, C. J and Varadachariar, J.*) DHANA PALA CHETTI *v* GOWR CHAND SOWCAR.

1938 M W.N. 938 = A.I.R. 1938 Mad 959 = (1938) 2 M.L.J. 775

——**S 11**—*Co defendants*—Res judicata—*Conflict of*

the plaintiff the relief which he claims, and (3) the question between the co defendants was finally decided

'ahman.

W 374

——**S. 11**—*Competent Court—Prior suit for a... of rent in Court of Assistant Collector, II ... under Agra Tenancy Act of* 1901—*Decision on pr... tary rights—Subsequent suit for ejectment under Tenancy Act* (*III of* 1926) *in Court of Assistant Collector, I class—If* res judicata.

For the application of the rule of *res judicata*, the Court which decided the former suit should have been competent to decide not only the issue which arises in the subsequent suit but the subsequent suit itself. The decision of an Assistant Collector of II class, in a suit for arrears of rent *inter partes* under the Agra Tenancy Act of 1901, holding that the defendant was a proprietor and not a tenant, does not operate as *res judicata* in a subsequent suit for ejectment under S 82 of the Tenancy Act of 1926 before the Assistant Collector of I class, and does not preclude the latter from referring an issue to the Civil Court and deciding it on the merits. In any case, the Civil Court, to whom the issue of proprietary right is to be referred, is not bound by the decision of the Assistant Collector, II class, in the prior suit for arrears of rent. (*Thom, Ag. C.J. and Niamatullah, J.*)

SHEODARSHAN LAL *v.* BALMAKUND.

I.L.R. 1938 All 184 = 1938 R.D. 43 = 174 I C. 62 = 10 R A. 537 = 1938 A.L R. 229 = 1937 A.W.R. 1215 = 1937 A L J. 1339 = A I R. 1938 All. 82.

——**S. 11**—*Competent Court—Rent suit—Variation in the rent—Compromise decree by Tahsildar—If* res judicata *in subsequent suit—Agra Tenancy Act, S.* 47.

A decree or order which sanctions a variation from the ... the decree or order of a ... A Tahsildar is not a ... to give any decision as ... ard to the provisions of S. 47 of the Agra Tenancy Act where in a suit for arrears of rent, a compromise is filed providing *inter alia* that the rent payable would be *batai* and not cash rent, an order of the Tahsildar recording the compromise and passing a decree in terms of the compromise is without jurisdiction, especially when the compromise never states the rate at which *batai* should be taken, confers no benefit at all on the tenant, contains no specific admission as to the cash rent recorded being wrong, contains no bargain and makes no change in the papers. Such a decree cannot operate as *res judicata* between the parties in a subsequent suit, and the fact that the tenant has in a subsequent suit remained *ex parte* and allowed a decree to be passed against him on the basis of the compromise decree cannot estop him

of exclusive jurisdiction, its decision on any matter on ... on is binding on the ... his is a decision by a ... which it has exclusive ... ll Cause Court decides ... isive jurisdiction, then ... sequent Courts. In a ... ourt has no exclusive ... of title. Hence the ... title in suit for rent cannot be *res judicata* in the subsequent suit for rent and for ejectment, because the prayer for ejectment

Court—Subsequent suit by same plaintiff against same defendant for same relief in Subordinate Judge's Court —Plea of res judicata—*Contention by plaintiff that former suit not really triable by Munsif's Court—If open—S.* 21—*Suits Valuation Act, S.* 11—*Principle of constructive* res judicata—*Extent and scope of.*

A judgment of a Court without jurisdiction is a nullity and want of jurisdiction cannot be waived. To this fundamental rule there are two exceptions recognized by law: (1) S. 11, Suits Valuation Act, which deals with defects of jurisdiction due to wrong pecuniary valuation, and (2) S. 21, C. P. Code, which deals with a wrong place of suing. These two sections recognise that there may be a waiver on the part of the defendant in regard to the pecuniary or territorial jurisdiction of a Court, as the case may be, and the absence of jurisdiction in such cases would not render the decree a nullity. In other words, there is a distinction between inherent incompetency in a Court and irregular exercise of jurisdiction,

C. P. CODE (1908), S. 11.

the defects contemplated by S. 11 of the Suits Valuation

operate as *res judicata* in a subsequent suit. An objection which a defendant *is precluded from raising is a fortiori* not open to the party who was the plaintiff in the former suit. Where a plaintiff invoked the jurisdiction of a Court of lower grade on the former occasion and subsequently files a suit for the same reliefs in a Court of higher grade, he cannot escape the bar of *res judicata* in the subsequent suit by pleading that the former suit was tried by a Court which had no jurisdiction to try it. Since the decision in the former can be challenged as incompetent or without jurisdiction, that decree would, if other conditions are satisfied, operate as *res judicata*

Newsam, J—Assuming that the former suit, if the

within limits, may choose their own forum, *e g.*, by under-valuing or overvaluing their claim or by suing in one district or in another. The jurisdiction of Court is only artificially limited by minor considerations such as the value of the suit or the place where the cause of action arose. Inherent defects stand on an entirely different footing. Once a party has chosen the forum which shall bear his cause, he must abide by his choice. (*Venkatasubba Rao and Newsam, JJ*) KAMMARAN NAMBIAR *v.* VALIA RAMUNI. 177 I C. 91 = 11 R M. 240 = 48 L W 679 = 1937 M.W.N. 1292 = A I R. 1938 Mad 257 = (19

——S 11—*Competent Court—Suit under N W F. Rent Act (XII of* 1 *proprietary right—If* res judicata *in ejectment under Agra Tenancy Act* 1926.

The N.-W.F. Rent Act (X not empower the Revenue Courts of proprietary right, except inci Act provide for an ejectment suit c plated by the present Agra Te Revenue Courts have been empo Tenancy Acts of 1901 and 1926 to decide conclusively a question of proprietary right or to have such an issue decided by the Civil Court The decision of a Court under Act XII of 1881 on a question o tary right in a suit for arrears of rent cannot *res judicata* in a suit for ejectment under the

C P. CODE (1908), S. 11.

——S 11—*Competent Court—Test—Competency to*

CHANDRA DEUTY *v.* RAJKUMAR DEUTY.
67 C L.J. 223.

——S. 11—*Conflicting decrees*—Res judicata.

Where there are two conflicting decrees *inter partes* the later decree must, for purposes of *res judicata*, be taken to prevail. (*Dhavle, J*) HIRA LAL SINGH *v.* MATIKDHARI SINGH. **176 I C 570 = 11 R P 88 = 4 B.R 741 = 1938 P W N 502 = 19 Pat L.T. 456 = A I R 1938 Pat 359.**

——S. 11—*Connected cases—Common trial—Dismissal of one suit and decreeing of the other—Appeal against one decree only*—Res judicata.

A suit was instituted by *A* against *B* for recovery of certain amount. Another suit was instituted by *B*

nd tried d. The f *B*. *A* but did

erate as decision

was not fatal and it was the later decision of the highest Court that would be binding on the parties. (*Bhide, J*) RAM SARUP *v* SARNU MAL
177 I C. 305 = 11 R L 294 = 40 P L R 198 = A I R 1938 Lah 114.

——S 11—*Consent decree*—Res judicata—*Conditions—Defendant in prior suit not denying fundamental assertion of right and consenting to decree without raising issue on point—Plea in subsequent suit denying such right—If barred.*

A consent decree cannot, merely because it is a con-

arrived at cannot be withdrawn, and the defendant in a subsequent suit cannot be permitted to plead his non-

A I R 1938 Mad 225.

——S 11—Constructive *res judicata*—Original order of Court allowing mortgagor to be in a portion of the house—Subsequent order to vacate—No constructive *res judicata* *See* C.P. CODE, O 40, RR 1 AND 2 AND S 11 (1938) 1 M.L.J.

See also 1937 M.W.N. 1292 (*supra*).

——S. 11—*Co-plaintiffs*—res judicata *between—Contest between them—If necessary.*

An issue may be *Res judicata* between co plaintiffs as well as co-defendants, and for an issue to be *res judicata* between co plaintiffs it is not necessary that there must be a real contest between them When the interests of various plaintiffs are common, and no question of adopting two conflicting positions as between themselves arises, the decision arrived at by the united efforts of all will bind them for ever, especially when the only person concerned in holding the [illegible] full right. (*Addison, A C.* [illegible]
RAM BHAJ *v.* AHMAD SAID [illegible]
178 I [illegible]

——S. 11—*Decision on question of law—Correctness of decision—If material.*

The correctness or otherwise of a judicial decision has no bearing upon the question whether it does or does not operate as *res judicata.* A party taking the plea of *res judicata* has to show that the matter directly and substantially in issue has also been directly and substantially in issue in a previous suit and has been heard and decided. The principle of *res judicata* is not to be ignored merely on the ground that the reasoning whether in law or otherwise of the previous decision can be attacked on a particular point It is not correct to say that a previous decision on a question of law is not *res judicata* in a subsequent suit. (*Puranik, J.*) SHEORAM *v.* MULCHAND. 175 I C 693=11 R N. 7= A I.R. 1938 Nag. 195.

——S 11—Decree for possession in favour of Mel- [illegible]

——S. 11—"*Directly and substantially in issue*"— [illegible]

[illegible] should form the subject-matter of a definite issue. [illegible] the Court can gather from the materials before it namely, the pleadings, the judgment and the decree, that that matter was directly and substantially in issue and formed the basis of the judgment arrived at in the [illegible]

[illegible] to show for want of proper materials as to whether an issue was raised and heard and finally disposed of, or whether it formed the basis of the decree in the suit or that it was necessary for the Court to decide it, the plea of *res judicata* must fail (*Rangnekar, J.*) JAMBU TAVAN [illegible]
1 [illegible]

——S [illegible]
Point n [illegible]
—Decis. [illegible]

Where though a point is not properly raised by the plaint but both parties have without protest chosen to join issue upon that point, the decision on that point would operate as *res judicata* between the parties. (*Stone, C.J. and Puranik, J.*) SITABAI *v.* HARI.
I.L.R 1938 Nag 496=A I R. 1938 Nag. 401.

——S 11—*Directly and substantially in issue—Previous suit under S. 127 of Oudh Rent Act dismissed on ground that plaintiff cannot sue alone—Subsequent suit for arrears of rent treating defendant as statutory* [illegible]

same defendant treating him as a statutory tenant is not barred by *res judicata.* The question which is directly and substantially in issue in the subsequent suit is whether or not the defendant is a statutory tenant of the plaintiff. This question was never directly and substantially in issue in the previous suit, much less was [illegible]

——S. 11—*Directly and substantially in issue—Rent suit—Plea that holding comprised further area at fixed rent — Finding upholding defendant's plea—Subsequent suit by landlord for same area as before—*Res judicata.

[illegible] directly and substantially [illegible] in the former suit and [illegible] decision in the former [illegible] ter suit would operate as *res judicata* in the subsequent suit. In a suit for pro- [illegible]

dants again resisted the suit on the ground that their holding included a further area of 1½ acres, and that the same had been settled with them at a total rent of Rs. 42 14 0.

Held that the decision in the former suit as to the [illegible] as *res judicata* in the [illegible] *J. Fazl Ali, Khaja Manohar Lall, JJ.*) [illegible] NGH.
[illegible] I C 676=5 B R 6=
=1938 P.W N. 379=
[illegible] 938 Pat 306 (S B).

[illegible] *bstantially in issue—Rent suit—Question of title—Decision—If* res judicata *in subsequent title suit.*

If, in a suit for rent, a question of title is raised, not directly, but incidentally, then any decision on the question of title cannot operate as *res judicata* in a subse [illegible]

C. P. CODE (1908), S. 11.

ADAKE *v.* GOPALAKRISHNAMACHARYA.
175 I.C. 866=11 R.B 10=40 Bom L.R. 359= A.I.R. 1938 Bom. 291.

——S. 11—*Directly and substantially in issue—Suit for rent of land in estate—Plea of rent-free tenure—Finding of rent free holding—Subsequent suit by purchaser of estate more than* 12 *years later for rent*—Res Judicata—*Adverse possession—Acquisition of rent-free title.*

In 1903, when the Court of Wards was in charge of an estate, a suit was filed to recover rent from the occupant of the land who pleaded that the land had been granted rent-free. The plea was upheld and there was a specific finding that the land was rent-fr
the person who purchased the estate in
sued the then occupant, a descendant of tl
pant, for rent.

Held, (1) that the decision in the prior
as *res judicata* on the question of liabilit
(2) that apart from *res judicata*, the judg
starting point for adverse possession in favour of the occupant of the land, and he must therefore be deemed to have held the la
to establish his rer
(*Wadsworth, J.*)
APPA RAO GARU

——S 11—*Execution proceedings—Application*

application is dismissed as having been
being under O. 21, R 58, C. P. Code, h
by the rule of constructive *res judicata* f
filing proper applications under S. 47, C
suits are filed instead of applications, t

1938 P.W.N. 239=A.I.R. 1938 Pat 216.

——S 11—*Execution proceedings — Co-judgment-debtors—Execution against properties of one—Objection by latter—Order overruling—If* res judicata *against others in subsequent execution*

An order overruling the objections raised by one judgment-debtor whose property is sought to be sold in execution does not operate as *res judicata* so as to preclude the other judgment-debtors from raising a similar objection in a subsequent execution application as against their property. (*Wort, C.J. and Manohar Lall, J*) BANARSI PRASAD *v.* MAHABIR PRASAD SAHU
177 I C 689=11 R P. 170= 5 B R 11=1938 P.W N 710

——S 11 — *Execution proceedings—Decision that house of judgment-debtor is exempt from attachment—Subsequent application to attach that house in hands of legal representative of judgment-debtor—If barred*

A decision by the Executing Court that a certain

C. P. CODE (1908), S. 11.

——S. 11—*Execution proceedings — Limitation—Notice issued to judgment debtor under O. 21, R. 22—Judgment-debtor failing to appear—Objection by him on ground of limitation at next date of hearing—Maintainability.*

On an execution petition filed by the decree-holder, the Court issued a notice to the judgment-debter under O. 21, R. 22, C. P. Code The judgment-debtor not appearing on the date fixed for his appearance, a further rule was issued for attaching the property fixing another date. On that date the judgment debtor appeared and made an objection that the execution was barred by limitation. *He was then within time to appeal against*

——S. 11—Execution proceedings—Mortgage suit—

——S. 11—*Execution proceedings—Omission to raise*

——S.11—*Execution proceedings—Order in execution*—Res judicata

Where a wrong order in execution has become final because an appeal therefrom has been dismissed as time-barred, principles of *res judicata* come into play and that order cannot be set aside in subsequent execution (*Middleton, J C. and Mir Ahmad, J*) AMIR KHAN *v* KHAIR MOHAMMAD
178 I.C 275=A.I R 1938 Pesh 77.

——S 11—*Execution proceedings*—Res judicata—*Applicability—Conditions—Order against decree holder subsequent to sale—If* res judicata *against purchaser in later proceeding*

S. 11, C P. Code, no doubt applies to orders passed in execution proceedings, but such orders would affect only the parties or their privies and not strangers not deriving title from such parties. An order passed against the decree-holder after an auction-sale, to which the auction-purchaser is not a party cannot operate as *res judicata* as against the auction purchaser in a subsequent proceeding (*Niyogi, J.*) MADHAO *v.*

In a suit for letters of administration an order
son of
stration.
be rival

suit alleging that defendant inherited property from father who obtained it by deed of gift from grandfather.

It is well settled that
S. 11, C. P. Code, mean
whether the party litigat
person. Where in the
purchase of property fr
the defendant had inh
grandfather, and in the second suit the plaintiff alleged

Held, that in both suits the plaintiff occupied the same capacity that of a purchaser from the defendant, and that, therefore, the plaintiff was litigating under the same title in the second suit as that which was set up in the first suit.

Held, further, that the question raised in the second suit was not directly and substantially in issue in the first suit, as in the second suit the matter upon which

42 C.W.N. 560.

——S. 11—*Litigating under same title—Former suit by A against trustees of temple that certain property attached to temple belonged to him—Suit decreed in favour of A—Subsequent suit by worshippers of temple against A's heirs—If barred—Plea of collusion in former suit—Onus.*

A suit was brought by *A* against the trustees of a certain temple that certain property attached to the temple belonged
on the ground th
in the temple.
A Later on, th
the worshippers
heirs for a decla
subject-matter
belonging to the
by *A's* heirs th
judicata, the pla
collusively and c
also because the
defendants in the former suit,

Held, that the plaintiffs being the worshippers of the temple were persons interested in it and had therefore the *locus standi* to sue to protect the property of the temple from being wrongfully claimed by third persons.

Held also, that though the plaintiffs were not the successors of the defendants in the former suit, the title litigated under in both the suits was the same, as they both claimed the title to the property in the temple. The plaintiffs were therefore litigating under the same

asserted that the decision in the former suit was not *res judicata*. (*Tek Chand, J.*) PIARE LAL *v* SHER GIR. 40 P.L.R. 867 = A.I.R. 1938 Lah. 499

A decision in a prior suit against a party in his personal capacity cannot operate as *res judicata* against him in a later suit by him as Mutawalli of a certain endowment. (*Syed Nasim Ali and Henderson, JJ.*)

8 C.L.J. 293.
ie title—Suit
ier—Decree—
writ—Report of process-server that well, house and trees not actually delivered—Subsequent application for re-issue of writ—
session alleged took
writ—Fresh suit for
LIMITATION ACT, S. 14.
19 Pat L.T. 250.

——S 11—*Miscellaneous proceedings—Berar Patels and Patwaris Law—Proceedings in respect of appointment of patel—Finding not based on full and fair enquiry—Subsequent vacancy—Prior finding, if* res judicata.

Where in respect of the appointment of a Patel, in a previous proceeding, a finding against a system of rotation of the office is given without a full and proper
f the amended law on the
s *res judicata*, when on a
estion of rotation is once
C.) SAKHARAM DATTAJI
1938 N.L.J. 171.

——S. 11—*Miscellaneous proceedings—Correction case under U.P. Land Revenue Act*—Res judicata.

A correction case under S. 39 of the U. P. Land Revenue Act cannot operate as *res judicata*. (*Darling S.M. and Bomford, J.M.*) RAM DAYAL *v.* BINDESHWARI PRASAD. 1938 R.D. 121 = 1938 A.W.R. 72 (B.R.).

——S. 11—*Miscellaneous proceedings—Correction case under S. 42 U. P. Land Revenue Act*—Res judicata—*Subsequent suit for declaration under S. 121 of*

SASTI HAJJAM *v.* GAURI HAJJAM.
1938 R.D 132 = 1938 A.W.R. 77 (B.R.).

——S 11—*Miscellaneous proceedings — Decision under S. 148, B. T. Act—If* res judicata *in subsequent regular suit.*

A decision under S. 158 of the Bengal Tenancy Act cannot be said to be a decree so as to operate as *res judicata* in a subsequent regular suit between the parties. (*Dhavle, J.*) HIRA LAL SINGH *v.* MATIKDHARI SINGH 176 I.C. 570 = 11 R.P. 88 =

59.
of
by

A zamindar having issued a notice of ejectment on his tenant as a non occupancy tenant under S. 67 (1) (*b*) of the Oudh Rent Act the latter instituted a suit to

C. P CODE (1908), S 11.

contest the notice. The suit was decreed and the notice of ejectment cancelled. Some years later the representative in interest of the zamindar sought to eject the successor in interest of the prior tenant.

Held, that the cancellation of the notice of ejectment as a result of the previous suit was binding on the present zamindar who was consequently estopped from seeking to eject his tenant on the same ground (*Darling, S.M*) PARMAL BISWAS *v.* RATI PAL SINGH. 1938 R.D.162=1938 A.W.R. (B R.) 90

——S. 11—*Miscellaneous proceedings— Order in correction of record case—If operates as* res judicata.

A brief and a casual order passed in a correction of records case, without taking any evidence and without considering the nature of the plots, cannot operate as *res judicata* in subsequent proceedings (*Darling, S M. and Mehta, J.M.*) BINDHACHAL RAI *v.* MOTI RANI. 1938 R D. 627 and 675= 1938 A W R. (B R) 282 (2)= 1938 A.L J (Supp) 91

——S. 11—*Miscellaneous proceedings—Prior suit under Agra Tenancy Act of* 1901—*Later suit under Tenancy of* 1926—*Change in Law—Bar of* res judicata

Where the previous suit brought to eject a su was under the old Act of 1901 a second suit under the new Act, 1926 in which the law ha changed, is not barred b[illegible] prior suit (*Darling,* [illegible] MAHESH SINGH *v.* MT. [illegible]

[illegible]

of *res judicata* can have no application as a consequence of a decision in proceedings which are in themselves final in the sense that they are conclusive between the parties, because they are [illegible] (*Costello and Panckridge,* [illegible] *v.* MANIKLAL. [illegible] 67 C. [illegible]

——S. 11—*Miscellaneo*[illegible] *Mahanth in Revenue Cour*[illegible] *Prior decision in Civil Cour*[illegible] *manent and unregistered and hence invalid—How far binding on Revenue Courts.*

Where in a civil suit certain leases executed by a Mahanth were declared to be not binding on the successor as they were permanent alienations, and also that as [illegible]

[illegible] 1938 A.W R. (B R) 315

——S 11—*Miscellaneous proceedings—Suit for profits under S.* 108 (15) *of Oudh Rent Act—Finding that lambardar was guilty of negligence in not getting* [illegible]

C P CODE (1908), S. 11.

——S 11—Miscellaneous proceedings—Suit under S. 99 of Agra Tenancy Act—Finding as to status of plaintiff—If *res judicata* *See* AGRA TENANCY ACT, S. 99 1937 R D 373 (2).

——Ss 11 and 47—*Order of stay under S.* 21 *of the Debt Conciliation Act—Appeal held incompetent—Fresh application for execution if barred.*

Where an executing Court stayed proceedings under S. 21 of the Debt Conciliation Act and an appeal therefrom was held incompetent, it is open to the decree-holder to apply afresh for execution. The prior order is not one under S. 47, C. P. Code, and it did not in the least affect the rights of parties and such an order cannot possibly be regarded as having the effect of *res judicata*. (*Niyogi, J*) HARI SADASHEO *v.* WAMAN VITHAL. 1938 N.L J. 229.

——S. 11—*Parties and representatives — Hindu father or manager—Adverse decision against — If* res judicata *against sons or other coparceners.*

A Hindu father or manager sufficiently represents his sons or the other members of the joint family in a suit instituted against the father or manager on a mortgage executed by him. The latter must be considered to be [illegible]

[illegible]

subsequent suit by the sons or other members to recover possession of the excess property included in the final decree and sold in execution is barred by *res judicata*, [illegible]

[illegible]

——S. 11—*Parties and representatives—Title suit against vendor and vendee—Decree holding that vendor had no title—Appeal by vendee impleading plaintiff alone—Vendor not party to appeal—Vendor not appealing—Effect—Finding against vendor—If* res judicata

[illegible]

of the plaintiff. The 1st defendant appealed impleading the plaintiff alone and without making the 2nd defendant a party to the appeal the appellate Court allowed the appeal and reversed the decree and dismiss- [illegible]

C. P. CODE (1908), S. 11.

Held, in Letters Patent Appeal, that the 1st defendant in assailing the decree of trial Court in appeal must be deemed to do so not only on his own behalf but also on behalf of his vendor, the 2nd defendant, that his success in the appeal would operate not only to his advantage but also to the advantage of the absent party. There was consequently no bar of *res judicata* against the 1st defendant's appeal. 1936 M.W.N. 789, reversed. (*Venkatasubba Rao and Abdur Rahman, JJ*) ARULAYI *v.* RAKKA KUDUMBAN. 47 L.W. 467= 1938 M W N 450=A I.R. 1938 M...

——S 11—*Plea of* res judicata—*Availability in judgment in earlier litigation that prevented from raising such plea*

If the circumstances of the earlier ... the defendant to raise the plea of *res j*... servations contained in the judgment ... that litigation that the defendant was ... raising any plea of *res judicata* in any ... would not preclude another Court from ... plea and examining the circumstances ... rests. (*Khundkar, J.*) FAKIR CHANDRA BISWAS *v.* EKKAI SARKAR 42 C.W.N. 560

——S 11—*Prior decision—Decree deciding dispute not given effect to by agreement of parties—Effect of—Decision in suit under S. 9, Specific Relief Act—Effect of.*

A decree for partition obtained in 1919 by ... her sister *B* and brother (the parties being ... was not executed as the parties had agreed not to take any advantage of the decree and they continued to be in joint possession of the properties as if the decree was not in existence. The parties having fallen out in 1932, *A* successfully instituted a suit under S. 9, Specific Relief Act, to recover possession of the properties, of which she was dispossessed by *B* through her husband and her son. *B* thereafter filed a suit for partition and possession of her share which was contested by *A* as barred by *res judicata* by reason of the decree suit of 1919 and the findings in the suit under Specific Relief Act.

Held that the parties not having given effect to the ...

... properties on the day she alleged in that suit that she was dispossessed and nothing more, and did not operate as a bar to the second suit. (*Leach, C.J and Varadachariar, J*) ABHIRAMI AM...

——S 11—*Prior decision*—... *same time—One of them institu*... Res judicata.

Where two suits are disposed ... there is no prior decision w... *judicata*, though one of the other. (*Darling, S.M and Bomford, J M*) RENUKA RAI *v.* SHYAM DUTT RAI 1938 R D 133= 1938 A W R. 81 (B R).

——S 11—Pro forma *defendant—Finding, if* res judicata.

A finding in favour of a part... defendant and not a necessary ... does not operate as *res judicat*... (*Addison, Ag C. J. and Din Mo*... DAR *v.* MT. KARAM NISHAN.

C. P. CODE (1908), S 11.

——S. 11—*Representative suit—Leave to sue on behalf of others not obtained in prior suit—Later representative suit—If barred.*

Where certain persons brought a representative suit on behalf of a community for establishing their rights connected with a temple and where it was contended that the suit was barred by reason of the decision in an earlier suit brought by certain persons of the same community with reference to similar rights in the same temple it was held that the mere fact that the persons ...

... *res judicata* operates as much on general principles as on the wording of the section. The *raison d'etre* of the rule is to confer finality on decisions arrived at by competent Courts between interested parties after genuine contest and to allow persons who had deliberately chosen a posi... re the ... *J. and Din Mahomed, J.*) ... SAID AKHTAR KHAN. 178 I.C. 302=40 P L R 591= A I R 1938 Lah 571.

——S 11, Expl. IV—*Applicability—Execution proceedings—Omission to raise point decided in suit—Point raised but not decided*—Res judicata.

The doctrine laid down in Expl. IV to S 11 of the C. P. C. is applicable to execution proceedings and must ...

... operates as *res judicata*, because it must be assumed ...

... *and Agarwala, JJ*) MAHADEO PRASAD *v.* BHAGWAT NARAIN. 177 I.C 810=5 B R 18=11 R P. 187= 1938 P.W N. 400=A I R 1938 Pat 427.

...

—*Subsequent suit at co-sharer for accounts—If barred.*

A person filed a suit as exclusive owner against persons in wrongful possession This suit being dismissed, he instituted another suit for accounts as a co-sharer. ... barred from ... in different ... in issue in ... constructive

C. P. CODE (1908), S. 11.

res judicata embodied in Expl. 4 to S. 11, C.P. Code, was inapplicable to the case. (*Coldstream and Monroe, JJ*) VIDYA WANTI KAUR *v* SARDAR SHAHDEV SINGH. A I R. 1938 Lah. 139.

——S 11—*Might and ought—Available defence not raised*—Res judicata

Where a person fails to plead a matter in defence in a previous suit, he is barred by *res judicata* from raising the same matter as subject matter in a subsequent suit. (*Bennet, Ag.C J and Verma, J.*) KANHAIYA LAL *v* BANKE BEHARI. 178 I.C 66= 1938 A.W R. H C 596=1938 A L J. 940= 1938 A L.R 808=A.I R. 1938 All 542

——S 11, Expl IV—*Might and ought—Alternative claim—Prior suit on title for possession—Defendants pleading possession as heirs—Dismissal of suit—Later suit for joint possession—Bar of* res judicata.

wa [illegible]
enc [illegible]
to [illegible]
da [illegible]

[illegible] 10 R N. 418

——S 11, Expl IV—*Might and ought—Earlier suit und* [illegible] *and later* [illegible] *Non-occu* [illegible] *been taken* [illegible]

The 'r [illegible] made a g [illegible] Expl IV [illegible] with the [illegible] between t [illegible] was one [illegible] for ejectment on the ground of an illegal transfer and the later suit was one under S. 86 of the Tenancy Act of [illegible]

[illegible] SAMAT KUMAR SINHA. 1938 R. D. 4= 1938 A.W.R. 16 (B R.)

——S 11—*Might and ought—Hindu joint family—Alienee from member of share in one item of family property—Suit for partition—Coparceners impleaded as defendants—Omission to raise pleas usually open in partition suit—Constructive* res judicata—*Rule—Partial partition.*

There can of course be no compulsory [illegible] tion under the Hindu, whether at the [illegible] member of a joint family or at the inst[illegible] alienee from a coparcener of one item of [illegible] perty Though the proper course for an alie[illegible] for partition of all the family properties, the co parceners who may be impleaded in his suit are not [illegible]

[illegible] a division being effected *inter se* between themselves or to have all questions in dispute between them settled once for all in the alienee's suit itself. Even in a suit instituted by a coparcener the other parceners might well be content to continue undivided and leave the only one to separate the plaintiff from them There is no principle of law which prevents the coparceners defendants in an alienee's suit from restricting the scope of the suit to what may be necessary for the grant of the relief claimed by the plaintiff. Where the alienee only claims a division of the particular item in which he has acquired a share, the coparceners who are impleaded are bound to plead only what would be answer to the claim made by the plaintiff. The fact that they do not raise other pleas which are not necessary in that suit cannot therefore operate as *res judicata* in a subsequent suit by a coparcener for partition. It would also follow that what is actually decided by the decree passed in the suit cannot be reopened at the instance of any of the persons who are parties to that suit or their representatives A plea of constructive *res judicata* must be determined only with reference to the suit as framed and not with reference to what under the law the suit must have been (*Varadachariar and Abdur Rahman, JJ.*) [illegible]

[illegible] *If barred by* res judicata.

Certain house was sold in execution of a decree against [illegible]

[illegible] ought to have been raised in the previous suit. The subsequent claim could not be considered to be so dis- [illegible] claim in the previous [illegible] The suit was there- [illegible] *judicata.* (*Bhide, J.*) 40 P.L R 556= A.I.R. 1938 Lah. 443

——S 11, Expl. IV—*Might and ought—Party not aware at the time of first suit of the right relied on in second suit—Bar of* res judicata.

In all litigation there are innumerable matters that might be made ground of defence or attack but whether they ought to be so made would defend largely upon the circumstances of each case. The question whether a party had at the time of the previous suit knowledge of the matter relied on in the subsequent suit [illegible] at the date of the [illegible] means of knowledge [illegible] suit, the second suit [illegible] tructive *res judicata* embodied in S. 11, Expl. IV, C. P. Code. (*Khundkar, J.*) FAKIR CHANDRA BISWAS *v.* EKKARI SARKAR 42 C.W N. 560

[illegible] —*Plaintiff undertaking* [illegible] *unts—Agreement not to* [illegible] *breach of agreement—Judgment debtor depositing money to prevent execution sale—Suit to recover money so deposited—Maintainability*—Res judicata—*C. P. Code, S.* 47.

In a suit brought by the appellant against the respondent, it was agreed between them that although [illegible] decree should be passed against the respondent [illegible] decree should not be executed by the appellant

holder. A decree was passed and in breach of the agreement, appellant executed the decree and brought the respondent's property to sale. The respondent deposited money to save his property from sale in execu

decree or judgment could not be recovered back in a

A.I.R. 1938 Pat. 41.

——S. 11, Expl IV—*'Might and ought'—Suit for possession based on title—Claim for compensation for improvements not set up in defence—Subsequent suit for such compensation—If barred.*

In a suit for possession of land based on title, a claim for compensation for the improvements made by the defendant *ought* to be set up by him in defence. If it is not so set up, a decree for possession passed in the suit would operate as a bar to the further agitation of the question of compensation in a subsequent suit.

48 L W. 708.

——S 11, Expl. IV—*Previous suit by plaintiff's predecessors claiming partition of whole shamilat—Subsequent suit by plaintiff claiming that certain well and land in shamilat was not liable to be partitioned—If barred by* res judicata.

A suit was instituted by the plaintiff's predecessors in which they claimed that entire shamilat was liable to be partitioned. A subsequent suit was brought by the plaintiff to the effect that certain well and land in the shamilat should be excluded from partition.

Held, that this plea ought to have been raised and made a g
plaintiff'
subseque
(*Addisor*
v. MEHA

——S

——S. 11, Expl. V—*Maintenance suit—Prayer that it should be charged on property not granted—Subsequent suit for such charge—Subsequent suit—If* res judicata.

uit for maintenance asks that
made a charge on the pro-
d and the Judge assesses the
t does not charge it on any
k the Court to
om the property
into arrears or
it is tantamount
to a request to charge the property with her maintenance (*Almond, J. C. and Mir Ahmad, J*) MT. HOWANI BAI *v.* DEVI DIAL. 177 I.C. 1005= A I R. 1938 Pesh. 68.

——S. 11, Expl. V—*"Relief"—Prior suit for partition and possession and mesne profits, past and present—Claim to future mesne profits not awarded—Second suit for mesne profits from date of suit or decree in prior suit*—Res judicata.

The "relief" referred to in Expl. V to S. 11, C. P. Code, means relief arising out of a cause of action accrued at the date of the institution of the suit, and such relief does not cover future mesne profits in respect of which the cause of action accrued subsequently to the suit. Where a suit for partition and possession of lands and mesne profits, past and future, has been brought and decided, and the decree fails to award the claim to future mesne profits, a second suit to recover mesne
ate of
nable
Code.
J.)
73=
24=
A.I R 1938 Bom 231 (F.B.).

——S. 11, Expl. VI—Representative suit—Suit by Hindu father for benefit of himself and sons—Dismissal on oath taken by defendant—Effect on sons—Fresh suit by latter on same cause of action—*Res judicata. See* OATHS ACT, Ss 8 AND 11. 40 Bom L R. 1005.

——S 11, Expl (vi)—*Representative suit—Suit by reversioner—Finding in*—Res judicata.

A suit brought by a reversioner is for the benefit of all the reversioners entitled to sue and just as any finding given in favour of a reversioner benefits all

C. P. CODE (1908), S. 13.

Code. Where the defendant voluntarily submits to the jurisdiction of the foreign Court even if that Court has no jurisdiction over him on the ground of his being a resident of British India, and consents to have a decree

foreign Court, and as such is binding on the defendant unless it is subject

C. P. Code. (*Ka*

v. RAGHAVEND

——S 13—S

to validity of wil

conclusive in Br

—If bound. *Se*

——S. 13 (a)—*Court of Competent jurisdi Test of—Power of British Indian Court in foreign judgment*

Whether a foreign Court

petent jurisdiction is to be d

international law. Ordinar

Courts in British India to

judgment, and to refuse to r

because it proceeds on grounds which would not be adequate in British India unless it offends against the rules of S. 13, C. P. Code. (*Rangnekar and Macklin JJ.*) MALLAPPA *v.* RAGHAVENDRA

I.L.R. (1938) Bom 16=174 I C 615= 10 R B 470=40 Bom L R 77= A I R. 1938 Bom. 173.

——S 13 (b)—"*Merits of the case*"—*Power of*

——S. 13 (c) and (f)—*Foreign judgment—Validity—Refusal to give effect to valid plea of* res judicata—*Disregard of international law—Effect of.*

A foreign judgment is impeachab

of the conditions specified in S. 1

C. P. CODE (1908), S. 20.

S. 17 of the C. P. Code does not confer jurisdiction on a Court unless the defendants are in possession of some property within the jurisdiction of that Court. Further, it is necessary for the section to apply, that the

ld be Courts in British India.

ossession of two items of property

hin the jurisdiction of a British

other was within the jurisdic-

Indian Court would have no jurisdiction to entertain the suit as regards the item of

——S. 17—*Suit in respect of house and land in Court within whose jurisdiction house alone is situate—Appeal from decree filed in proper Court—Claim in respect of house abandoned in appeal—Appeal relating only to land which does not lie within jurisdiction of appellate Court—Appeal, if can be heard.*

Where a suit in respect of a house and certain land was filed in a Court within whose jurisdiction the house

——S 20—*Place of suing—Commission agent directed to sell goods—Agent intimating terms of business and asking for custom*

in Bombay what his charges

he commission agent wrote a

in detail and saying "let us

Then you shall have reli-

en by the commission agent

d business was not an

The fact that the

have your transaction

offer to be bound by

indication up till then

ing in Hoshangabad

f action therefore did

rict but in Bombay.

RAMDAS *v.* ABDUL-

SATTAR. 173 I.C. 943=10 R N. 331= A.I R. 1938 Nag. 186

——Ss. 20, 23 and 151—*Leave granted under S. 20* (b) *without notice to opposite party—Objections* . *such leave—If can be heard.*

Where leave under S. 20 (*b*) is granted

10 R Pesh 74=A I R. 1938 Pesh. 15

——S. 20 (b)—*Leave under—Grant of—Effect—Suit on same cause of action against many defendants—Some resident beyond Court's jurisdiction and one outside British India—Suit instituted after obtained leave of Court—Decree—Validity—Suit by non resident foreigner to declare decree void—Competency—Propriety of grant of leave—If can be challenged.*

There is no reason to read Cl (*b*) of S. 20, C. P.

ing the same as against all of them, where leave has been obtained under S. 20 (*b*) of the C. P. Code to implead them in the suit, the suit is properly instituted against all the defendants including those resident beyond the Court's jurisdiction, and it makes no difference for that purpose whether these latter are residents of British India though outside the local limits of the Court's jurisdiction or are persons residing outside British India The decree passed in the suit cannot be attacked in a subsequent suit as being void for want of jurisdiction as against the non-resident foreigner Any argument as to whether the leave was or was not properly granted under S 20 (*b*), C. P. Code, in the particular circumstances is not one which can be advanced in a separate suit attacking the validity of the decree passed in that suit. (*Varadachariar and Horwill, JJ.*) SWAMINATHAN CHETTIAR *v.* SOMASUNDARAM CHETTIAR. 47 L W. 552=1938 M.W N. 558= A.I.R. 1938 Mad 731.

——S. 20 (b)—*Leave to sue—Granting of—Considerations*

The leave under S 20 (*b*) cannot be given arbitrarily and when the defendants who reside outside jurisdiction do not appear the Court is bound to consider their position before granting leave. This obligation is in no way lessened when they do appear and object and

If from the circumstances a contract is entered into, it is reasonable to infer that the intention of the was that performance was to be in a certain place inference should be drawn whether the rule English Common Law which requires the debtor

the creditor applies or not to India. Under S. 49 of the Contract Act, it is the duty of the promisor when no place is fixed in the contract for the performance of it to apply perfor- place. statutory The local office in the City of Shiyali taluk in Tanjore r leasing the lands to the n Madras. The defendant ase in favour of the Super- o resided in Madras and who was described as such in the lease. But the lease deed itself was executed and registered in Shiyali taluk. The rent was fixed in cash. The lease, however, did not fix any specific place where payment was to be made. A suit for rent was instituted in the City Civil Court, Madras, but that Court returned the plaint holding that it had no jurisdiction as the cause of action did not arise in Madras

Held, that the intention of the parties must have been

A.I R. 1938 Mad 977.

——S 21—*Applicability—Suit to set aside decree on ground that Court had no territorial jurisdiction—If lies.*

A separate suit would always lie to have a decree set aside or to get it declared a nullity on the ground that the Court passing the decree had no territorial jurisdiction as regards the subject-matter of the suit. The provisions of S. 21, C. P. Code, are inapplicable, as the question does not arise before the Appellate or Revisional Court. (*Mukherjea, J.*) KUMAR SARAT KUMAR ROY *v.* DHARMADAS BHATTACHARJEE.
174 I C 522=10 R C. 685=42 C.W N. 375.

——S 21—*Objection to place of suing—If can be allowed in revision.*

An objection as to the place of suing cannot be allowed in a revisional Court where there has not been a consequential failure of justice. (*Abdul Rashid, J.*) G. P. CHATTERJEE *v.* DHANPAT MAL DIWAN CHAND.
40 P.L R 234.

——S. 21—Principle of—Applicability and scope—Constructive *res judicata* as to jurisdiction of Court—Right of party to challenge jurisdiction of Court chosen by himself *See* C. P. CODE, S. 11.
1937 M W.N. 1292.

——S. 21—*Applicability—'Other proceeding' if*

cient to cover the retransfer of the decided case, back

C P. CODE (1908), S 24.

1938 O A 621=1938 O W N 775= A.I R. 1938 Oudh 217.

——**Ss. 24 and 115**—*Case transferred under—Revision, if lies.*

Where a case is transferred under S 24, no revision lies from the order of transfer; but if it is found that the application for transfer is not *bona fide* one, the case can be retransferred. (*Bhide, J.*) KESHO DAS *v.* N. C. GOYAL & CO. 175 I C 525=10 R.L 735= A I.R. 1938 Lah 95

——**S. 24**—*Execution proceeding — Transfer of objection proceedings to another Court without transferring execution proceedings—Legality*

Obiter: Where in execution of a decree certain property of the judgment-debtor is attached and a third person files an objection to the attachment on the ground that the property belongs to him, the objection can be decided only by the executing Court and therefore the transfer of the objection proceedings alone to another Court without transferring the execution proceedings to that Court is not in accordance with law (*Bhide, J.*) KESHO DAS *v* N C GOYAL & CO 175 I C 525=10 R L 735= A I R. 1938 Lah. 95.

——**S 24**—*Ground for transfer—Judge deciding particular question of fact or law in previous case.*

The mere fact that the Judge had decided a particular point of law in a previous case is no reason for a transfer in a subsequent case, otherwise a Judge would eventually become unfit to decide most cases. If the question is one partly or wholly of fact, still less does there seem to be any reason for a transfer.

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S 34—*Interest pendente lite—Duty of Court.*

Where a claim is held to be proved, there is no reason for refusing to the plaintiff, interest for the period during which recovery was delayed by defendant contesting the suit. (*Weston*) RAJ MAL *v* CHHAGAN MAL 1938 A M L.J. 39

——**S 34 (2)**—*Applicability—Maintenance decree creating charge and directing payments in future also—Omission to award interest—Effect—Suit for interest in respect of maintenance accruing due in future—Maintainability*

A decree granting maintenance at a certain rate per month from the date of plaint and also future maintenance and which gives the plaintiff a charge in respect of maintenance on immovable property is none the less a decree for money within the meaning of S 34, C P Code, the fact that it directs the payment of money in the future as well as money immediately rendered due by the decree and that it creates a charge does not render S 34 (2) inapplicable to it Where such a decree does not award interest in respect of future maintenance a suit claiming in

barred by S 34

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——**S 35**—*Award of costs—Discretion of Plaintiff not accepting tender of part payment*

P. CODE (1908), S 35.

The question of costs is not affected by the fact that the plaintiff had refused to accept a tender of part payment. A creditor is under no obligation to reduce the costs of proceedings for the benefit of the debtor by accepting a tender of part payment and, thus bringing the amount for which proceedings have to be taken, within the jurisdiction of a less costly tribunal. The fact that the tender was subject to no conditions and it was accompanied by a statement that, if accepted, it would be without prejudice to the creditor's claim to sue for the balance, is immaterial (*Panckridge, J.*) ISMAILBHAI RAHIM *v.* ADAM OSMAN I L.R. (1938) 2 Cal 337=42 C.W N. 1023.

——**S 35**—*Award of costs—If includes pleader's fees.*

Pleader's fees are costs of the suit and unless pleader's fees are specifically excluded an award of costs of the suit must be taken to include pleader's fees There is no distinction between awarding costs of the suit and decreeing a suit with costs. (*Weston*) BHAG CHAND *v.* BENI PARSHAD. 1938 A. M L J. 47.

——**S. 35**—*Several plaintiffs — Separate costs—If can be awarded.*

It is not in any circumstances possible, in a case where there is more than one plaintiff, for such plaintiffs to appear and act separately If any of them is not disposed to act with, and to appear by the same advocate as, the others then the only proper course open is to apply to strike him out as a plaintiff and to add him as a defendant The plaintiffs are entitled to one set of

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ame solicitor (*Braund, J*) SEFDAT 1938 Rang L R 252.

S 35 A—*Applicability—Retention*

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in respect of the proceedings before it. (*Ameer Ali, J*) M. S. COHEN *v.* SIRDAR SAHEB IQBAL SINGH 42 C W N 658.

——**S 35 A**—*Special compensatory costs—If can be awarded in addition to heavy counsel's fee*

Where such a large sum as Rs 2 275 have been awarded to the plaintiffs for counsel's fee, it is not proper to award special costs under S 35-A of the C P.

...

A.I R. 1938 All 400.

——**Ss 38 and 63**—*Relative scope—S 63, if controlled by S 38—Property attached by different Courts—Superior Court calling up proceedings from inferior Court—Power of superior Court to sell property attached by inferior Court—"Realize such property"*

There is no warrant for holding that S 63 C. P. Code, does not give jurisdiction to a Court to sell attach-

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C. P. CODE (1908), S. 39.

how and in what manner and in what petition the Court of highest grade should realize the property, in this respect as in respect of claim petitions S. 68 must be held to override S. 38. S. 38
dealing with execution.
holder and one decree.
holders than one and the
by more Courts than one
the definition of the situation as given by S. 63, it is obviously S. 63 which must be applied, and S. 63, cannot be controlled or governed by S. 38. (*King and Krishnaswami Ayyangar, JJ*) VENKATA REDDI *v.* VENKATARATNAM. 1938 M W N. 1098 = 48 L W 664.

——S. 39—*Application under—Form—Notice to judgment-debtor—Necessity—Requirements of O. 21, R. 11—Compliance with—Necessity.*

S. 39 of the C. P Code does neither provide that notice to judgment debtor is necessary, nor prescribe a particular form
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formalities laid d
for such an appli
v. GHISOO LAL

——Ss 39
Executing Court
certificate—Competency to give

A Court executing a decree sent to it, has the same powers in executing it, as if it had been passed by itself It only executes the decree and not the certificate sent by the Court passing the decree. As such it is not bound by any amount mentioned in it. It is the decree itself which is to be the guide in these matters for the executing Court It is competent to execute it for the amount due though it may be in excess of that mentioned in the certificate. (*Misra, J.*) MANGAL CHAND *v.* MT. DULARI BIBI. 1938 A W.R. (H C.) 667 = 1938 A L J 980 = A.I R 1938 All 664.

——S. 39 (2) (d)—*Small Cause C*
execution application to its regular
to proceed against immovable propert

It is a principle of the interpretatio
where a list of certain circumstances in which a parti-

Ahmad, JJ) SITAL RAM *v.* THAKUR DAS. 178 I C. 127 = A I R. 1938 Pesh 70.

——S. 39 (2)—*Transferee Court—Competency to execute—Test.*

The words 'of competent jurisdiction'
that the competence of a Court to exec
decree, must be determined by a referen
tence to try a suit of similar valuatio
decree sought to be transferred was
Ahmad, J) SITA RAM RAI *v.* MADHO
1938 A W.R. (H.C.) 763 = 1938 A L J. 1128.

——S. 40—*Decree sent for execution to Court of another province—Law governing such executions.*

C. P. CODE (1908), S. 44.

Where a decree of a Court of one province is transferred to a Court in another province, for purposes of execution, according to S 40, C. P. Code, the rules
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77 I.C 487 = 11 R.L. 330 (2) = 40 P L R. 14 = A.I.R. 1938 Lah. 126.

——S. 41—*Jurisdiction of the transferee Court—When terminates—Striking off of execution application—Effect.*

S. 41 of the C. P. Code states that the Court to which a decree, is sent for execution *shall certify* to the Court which passed it, not merely that it shall make an order that such a certificate shall be prepared. Where a transferee Court on the application of the decree holder to strike off the execution in part satisfaction, did order it

——S 41—*Scope—Certificate under—What amounts to—Arrangement in transferee Court between decree-holder and judgment debtor—Time given to latter to pay up certain amount in full satisfaction—Attachment kept alive and decree holder having liberty to proceed to execute for whole amount on default—Report sent by Court to transferor Court relating true facts—Jurisdiction of transferee Court to execute—If terminates.*

Where the Court to which a decree has been transferred for execution has neither executed the decree nor finally failed to execute the decree, it does not cease to
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satisfaction, the

——Ss. 42 and 145—*Execution of decrees against surety—Jurisdiction of Transferee Court.*

The transferee Court has jurisdiction to execute the

State—Execution in Burma after separation—Law as to. *See* GOVERNMENT OF BURMA (ADAPTATION OF LAWS) ORDER PARA. 9 AND GOVERNMENT OF BURMA

C. P. CODE (1908), S. 47.

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——S 47.
Appeal.
Applicability
Bar of suit
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Parties and representatives.
Parties to suit.
Question relating to execution to satisfaction.
Scope

——Ss 47 and 115—*Appeal—Amendment on application under Ss.151 and 152—Appeal if lies—Revision, competency.*

executability of decree—Decision on—Appea

S 145, C P Code, puts the surety o
footing as an original party to the suit , a
and S. 47, C P Code, be read together, th
the Court into a question raised by the surety as to the executability falls under S. 47, C. P. Code, and the decision thereon is appealable Even if S 145 does not in terms apply, as for instance where the surety is not personally liable but the money which he has deposited as security is sought to be made liable, the surety has an equal right of appeal (*Horwill, J*) RANGASWAMI CHETTI *v* NARAYANA IYENGAR

176 I C 961 = 11 R M 207 = 1937 M W N 1259 = A I R 1938 Mad 215

——S 47 and O 21, R 2 (3)—*Applicability—Instalment decree with default cause—Application for execution—Plea of payment—Burden of proof—Payments alleged beyond 90 days—If can be recognised—Decree-holder—If bound to prove default.*

When no payment or adjustment of a decree has been certified under O. 21, R. 2, C. P. Code, and the decree holder applies for execution of his decree for the entire amount due under the decree, the executing Court has to assume that there has been no payment or adjustment and cannot after the lapse of the period of 90 days

C. P. CODE (1908), S. 47.

vour of Hindu widow declaring her right to maintenance and declaring charge on property—Executability—Separate suit to enforce charge by sale—If necessary

Where a decree has been passed declaring the right of a Hindu widow to
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perties. When the decree for maintenance has the effect of a decree for sale, the decree-holder is entitled to proceed to execution without any further action. If the charge is created by the decree in the action then a separate suit would be necessary to enforce the charge by way of sale of the properties charged. But when the
not by reason of the decree made on
action but under the Hindu Law,
ion for the declaration of the right to

18 Pat L T. 834 = A I R 1937 Pat 654.

——S 47 and O 21, R. 58—*Applicability—Objection by sub-tenant to attachment of rent payable by him*

not appealable but only revisable under S 252 of the Tenancy Act (*Darling, S M and Bomford, J.M*) RAMCHANDRA *v.* RAGHUNATH SINGH

1938 R D. 175 = 1938 A W R. 42 (B R.).

——S 47—*Applicability—Order refusing to stay execution—Appeal, if lies*

When an Amending Act changes the phraseology of

staying or refusing to stay execution of a decree. (*Baguley and Mosely, JJ*) CHIDAMBARAM CHETTYAR *v.* SOMASUNDARAM CHETTYAR

1938 Rang L R 580 = 177 I.C 942 = A I.R. 1938 Rang 317.

——S. 47—*Applicability—Question relating to delivery of possession to auction-purchaser*

The question relating to the delivery of possession of the property purchased by an auction-purchaser is not a question relating to the execution, discharge or satisfac-

C.W.N. 87=
38 Cal. 113.
tion—Decree-

——S 47—*Parties and representatives—Widow added as legal representative of judgment-debtor—Widow objecting to sale on the ground that it was given to her in dower—If entitled.*

Where a widow was added along with the

BIBI ROSHAN JAN *v.* KAHAN CHAND
10 R Pesh 53=
A I R. 193. Pesh. 82.

——S 47—"*Representative*"—*Final decree in partition suit—Purchaser of share of defendant subsequent to final decree—If representative of judgment-debtor—Application for delivery in execution against purchaser—Competency.*

A final decree for partition was passed in a suit for partition and subsequently the defendants executed a sale deed in favour of the respondent by which they trans-

——S 47—*Parties to suit—Person against whom no relief was either prayed for or granted*

——S 47—*Question relating to execution—Attachability of the property.*

The question as to whether a particular property is liable to be attached and sold for satisfaction of the decree, is a question relating to the satisfaction of the decree. It cannot be said that the section contemplates that the question must relate to t[illegible] decree as between the attaching de[illegible] one hand and the objecting defe[illegible] (*Nasim Ali and Mukherjea, JJ.*)

decree some property in excess of what has been granted to him by the decree, it will be a matter relating to execution. Where, therefore, by the decree cultivating rights in *sir* lands were expressly excluded and yet in [illegible] pos- *sir* P. its. 93. *ent* ied urt cannot go into to execution, dis- In putting forward such a claim the judgment-debtor is asking the Court to embark on an enquiry whether the decree to be executed is the decree as passed by the Court or as modified by parties. (*Pollock, J.*) BHASKAR DATTATRAYA *v.* NILKANTH DATTATRAYA. 177 I C. 673= 11 R N. 159=1938 N.L.J. 148= A I R 1938 Nag 265.

——S. 47—*Question relating to satisfaction of decree—Separate suit—Necessity*

A.I R 1938 Nag. 49.

——S. 47—Restitution—Decree passed by Court *A* [illegible] ty by decree-)ecree trans- setting aside Court at *B* estitution in 14, 47 AND '38 Cal. 554.

tion-purchaser if a party still delivery of possession—Resistance by judgment-debtor—Question, if falls under S. 47 or O. 21, R. 103.

S 47 should be construed liberally. A decree-holder purchasing the property sold in execution of his decree with the permission of the Court retains his character

C. P. CODE (1908), S. 47.

——S. 47—Scope—Order by
ing to stay execution proceeding
falls under—"Decree"—Appeal.

——S 47—Scope—Party to
O 21, R. 58—Dismissal as barre
able—Subsequent suit—Bar—If c
cation under S. 47 and entertaine
C. P. CODE, S. 11

——S. 47—Scope—Question contravention of Santhal Paraganas Settlement Regulation and as such invalid—If can be raised in execution *See* SANTHAL PARGANAS SETTLEMENT REGULATION, S. 6 (*b*) **1938 P.W N. 617.**

——S 47 (2)—*Application of—Partition proceedings —Award declaring rights of parties without giving*

fee.

Held, that the question of payment of additional court-fee could arise only when the Court had decided

decree *See* C. P. CODE, O 34, R 6 **1937 A.M L J 99**

——S 48—*Construction and scope—"Decree"—If*

only provides the maximum period during which an

C. P. CODE (1908), S. 50.

——S 48—Objection under—When to be taken—
of
on
. P.

1937 A.W.R. 1222.

48—Scope—Period of 12 years—If affected or by S. 78 (2), Provincial Insolvency Act. *See* IAL INSOLVENCY ACT, S. 78 (2).
48 L W. 881.

equitable right to have execution stayed until his suit shall have been decided and therefore to set-off his decree which may be passed in his suit. (*Barlee and Macklin, JJ*) GURUSHANTAPPA *v.* NAGAPPA.
I L R. (1938) Bom. 263=175 I C. 427= 10 R B. 560=40 Bom. L R. 188= A I.R 1938 Bom. 253.

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——**S. 50 and O. 22, Rr. 11 and 12**—*Relative scope of—S. 50, if applies to appeals from execution proceedings—O 22, R. 11, if applies—And if controlled*

does not apply to appeals arising from execution proceedings but only to those in the original Court. It is not correct to say that R. 11 of O 22 is controlled by

against wrong legal representative
nature of—Duty of plaintiff in

the estate of a deceased person, represented by his legal representative, the plaintiff must
ful to implead all the ordinary legal
r the law applicable, if he wishes to
cree that might be passed. Never-
has impleaded the ordinary legal
owing to ignorance of facts or
ason of which it turns out that the
entatives were in fact others

C. P. CODE (1908), S. 60.

but failed to produce him on that date. They them-

in Court on the date fixed. It was however not established that he was so ill that it was physically impossible for him to appear or to be produced.

Held, that the surety bond not having provided for such a contingency or for absolving the sureties from liability in such a contingency, they were not absolved from liability and hence were against under the bond in e (*Pandrang Row, J.*) KUMARA re. 47 L.W. 408

——S. 60—*Amendment to* ... *introduced by Act IX of 1937—Retrospective effect—Suit in S. 3 of Act IX of 1937—Meaning of—Proceedings resulting on award in arbitration.*

A I.R. 1938 Sind 176.

——S 60—Applicability—Crown grant of village—

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awarded under Land Acquisition Act—Liability to attachment.

Compensation money awarded

apply to such a case and the amount in the hands of the Collector cannot be attached by creditors holding money decrees against the persons to whom the compensation has been awarded (*Addison and Abdul Rashid, JJ*)

actually existing debt, tha debt. A sum of money become due, or the payr contingencies which may debt. (*Tek Chand, J.*) LAL.

40 P L R. ... A I R 1938 Lah. ...

——S. 60—*Implements of husbandry—Motor tractor,*

C. P. CODE (1908), S 60.

——S. 60—*Partial redemption— Property owned*

A Malabar tarwad became divided into two tarwads. Each of them possessed an undivided moiety in certain properties and each of them separately mortgaged its undivided half to the same person. One of the tarwads sought to redeem its half-share without suing for partition

——S. 60—*Pay of soldier in regular forces governed by Army Act—Attachability.*

The pay of a soldier of His Majesty's regular forces

In so far as the substantive law is concerned, that dealing with the actual rights and liabilities of the parties, e g son's liability for his father's debts, it is of as regards the law of procedure have been are governed in these matters by the Code of Civil Procedure Where in a mortgage suit against the father and sons,

of property that can be attached and sold under S 60, C. P. Code. After partition, the share that goes to the son does not belong to the father and the father has no disposing power over it. Therefore such property does not fall within S. 60. Thus it cannot be attached. But e for his father's debts if he an be made liable under the In neither of the cases how-

——S 60—Property—Thiccadar—Decree against for

C. P. CODE (1908), S. 60.

can be attached and sold in execution of a decree. (*Panckridge, J.*) RADHA KISSEN *v.* HIRALAL BANJARA. 42 C.W.N. 1086.

——(as amended in 1937), S. 60—Scope—If affects S. 73. *See* C. P. CODE, S. 73. A I R. 1938 Sind 144

——S. 60 (1)—*Agriculturist—Who is—Tests to be applied.*

In determining whether a person is an agriculturist the following factors should be noted: (1) Whether a person is an agriculturist or not is not a question turning on source of income but on nature of occupation. (2) A person may have many occupations. If one of them is ... ng is ... who ... oduce ... erson ... ber a landowner nor a tenant, is an agriculturist. (5) If a man cultivates the land with his own hands or by means of labourers whose activities he directs, he is an agriculturist whether he operates on a large or a small scale. If he has no connexion with the land except that he owns it and people work for him, he may or may not be an agriculturist according to circumstances. (Case-law discussed). Hence an owner of land is not an agricul...

...

The term 'agriculturist' as used in S. 60 must be strictly construed It denotes a husbandman ... person who carries on and makes his living by ... and not a mere owner of land. 47 P.R. 1897, (*Bhide, J.*) ...

——S. 60 ...

—*If should have become payable before attachment—Advocate engaged by government to conduct government case—Stipulation of fixed daily fee—Direction to submit bills for payment at end of month—Advocate entering upon duties—Remuneration earned by advocate—Attachability before end of month.*

...

be attached and sold in execution ... him, though such fees become payab... of the month. (*Mahomed Noor an*... BANSI LAL *v.* MAHOMED HAFIZ.

...

C. P. CODE (1908), S. 60.

1934) which came into force in 1935 does not divest the Official Receiver of property which is validly and legally vested in him in 1933. Nor can the legal representatives of the insolvent claim exemption under S 60 (1) (*c*) when succession to them opened out long after the vesting of the property in the Official Receiver. (*Tek Chand, J.*) KALA SINGH *v.* BOOTA SINGH 178 I.C. 195 = 40 P.L R. 793 = A.I R. 1938 Lah. 459.

——S 60 (1) (c)—*Construction—'Occupied by'—Meaning of—All occupied houses, if exempt.*

The words 'occupied by' in S 60 (1) (*c*), C. P. Code, mean that it is something more than a dwelling house. It is a building occupied by him when he is following his avocation of an agriculturist The use of the word 'houses' make it clear that all houses occupied by him, as such, are exempt. (*Darling, S M. and Mehta, J.M.*) AMAR SINGH *v.* GANGA PRASAD 1938 R.D. 840.

——S 60 (1) (c)—*Exemption under—Scope of—Person ceasing to be a Zamindar and becoming an 'Agriculturist' between dates of attachment and sale—If can claim.*

The house of an agriculturist is under S. 60 (1), C. P. Code, exempt both from an attachment and sale in execution of any decree Where on the date of attachment ... elihood (1) ... ofits arising ... s and was ... owing to a ... agricultu... rist before the date of sale.

...

1937 A L J. 1314 = 1937 A W.R. 1220 = 1938 A L R. 114 = A.I R. 1938 All. 85.

——S. 60 (1) (c) (as amended by S. 35 of the Punjab Relief of Indebtedness Act, VII of 1934)—*House mortgaged with possession by agriculturist and taken on rent from mortgagee—Liability to attachment.*

Where a house belonging to an agriculturist is exem-...

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A.I.R. 1938 Lah. 7...

...

means a person who earns his livelihood wholly or prin-... personally or through ... he chief source of his ...

C. P. CODE (1908), S. 60.

——**S. 60 (1) (c)**—*Protection under—If can be waived—Mortgage by agriculturist—If amounts to waiver.*

The protection given under S. 60 is for the benefit of the judgment debtor and can be waived by him. Therefore, if he chooses specifically to mortgage his agricultural houses he must be taken to have waived the privilege conferred upon him by this section. (*Rose, J.*) RAMADHIN v SHEODUTT. A I.R. 1938 Nag 544.

——**S. 60 (1) proviso, cl. (c)**—*Property exempt from attachment in hands of judgment-debtor—If also immune from attachment in hands of his legal representatives.*

Under cl. (*c*) of the proviso to sub S. (1) of S. 60, C.P. Code, exemption attaches to the property itself and not to the person holding the property for the time being. Consequently if a property is exempt from attachment under the said clause in the hands of the

177 I C 835=40 P.L.R. 409= A I.R. 1938 Lah. 608.

——**S. 60 (1) (g) and (n**

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Deshmukh, Deshpandia and *Sir mukaddam*, is not affected by Cl (*g*) of S. 60 (1), C. P. Code. Nor is it affected by Cl (*n*) either for the right of the holder is not future or contingent, but present and vested. (*Pollock, J.*) DEORAO v. RAM

1938 N.L J 112=

——**S. 60 (1) (h) and (i)**—

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within the meaning of Cls. (*h*) and (*i*) of S. 60 (1). (*Mahomed Noor and Chatterji, JJ.*) BANSI LAL v. MAHO

LAL v. MAHOMED HAFIZ. 178 I.C. 141= 5 B R. 61=19 Pat.L T. 768.

——**S. 60 (1) (i)**—*Construction and scope—Salary—If restricted to salary of officers entitled to allowance under Cl.* (h).

There is no reason to restrict the scope of Cl (*i*) of

C. P. CODE (1908), S. 64.

JJ.) BANSI LAL v. MAHOMED HAFIZ. 178 I C. 141=5 B R 61=19 Pat L T. 768.

——**S 60 (1) (l)**—*Public officer—Advocate engaged by Government to conduct Government suit—If public officer.*

Conduct of a suit on behalf of the Government by an advocate for the recovery of public money is performing a public duty which the advocate undertakes. An advocate who is appointed by the Government as a lawyer to conduct a suit on its behalf is an officer and a public officer within the meaning of S. 60 (1) (*l*), C. P. Code. (*Mahomed Noor and Chatterji, JJ.*) BANSI LAL v. MAHOMED HAFIZ. 178 I C. 141=5 B R 61= 19 Pat L T. 768.

——**S. 60 (1) (m)**—*"Contingent or possible right or interest"—Bequest of income of property to husband and wife for life—Gift over of income and corpus to children —Interest of children—Attachability during lifetime of parents.*

A testator by his will directed that the residue of his estate should be divided into sixteen shares, and he bequeathed three of such shares to his nephew *A* and *W*, his wife and their issue By a codicil of later date the testator revoked his bequest and in lieu thereof directed:

while both *A* and *W* were alive, a creditor attached the interest of *P* one of the sons of *A* and *W* in the three-sixteenths shares in the testator's residuary estate.

Held, that the interest of *P* under the codicil was, during the joint lives of *A* and *W*, unquestionably con-

48 L W. 664.

——**S. 64**—*Attachment subject to mortgage—Subse-*

bsequent compromise,

o transfer a portion of

ortgagee in considera-

charge and releasing

rom the mortgage is

not illegal by reason of S. 64, C. P. Code, more specially so when the mortgagee had already become entitled to possession even prior to the attachment. (*Bhide, J.*) KISHAN SINGH v PRITAM SINGH.

A I R. 1938 Lah. 737.

——**S 64**—*Properties mortgaged to a person—*

the proper-

purchasing

ttachment—

ished—Suit

vere already

ecution of a

, the mort-

C. P. CODE (1908), S. 65.

to sale those items to sale in pursuance of their attachment, and was resisted in delivery proceedings by *A*. *A* subsequently brought a suit for sale of the properties,

exists over the property just as it did prior to the sale The sale being void, *A* becomes a simple mortgagee and can bring a mortgage suit (*Horwill, J.*) MARIYAPPA NADAR *v* RAMANUJ

——S 65—*Proper*

proceedings may be taken in connexion with the confirmation of the sale by the judgment debtor whose property is sold. The vesting of the property in auction-purchaser is not postponed till the final decision of the proceedings started by the judgment debtor. (*Mir Ahmad, J.*) RAM DITTA MAL *v.* CHARAT SINGH.
177 I.C. 555 = 11 R. Pesh 29 = A.I.R. 1938 Pesh 49.

ben

for

answer to an objection under S. 66, C P. Code (*S K Ghose and Patterson, JJ*) ALI AHMED *v* SHAMSHUN NESSA. **42 C W.N. 1059 = A I R. 1938 Cal 602.**
——S 66—*Applicability—Plaintiff already in pos*

Applicability—Suit against assignee of certified purchaser.

The objection
suit against an ass
Ghose and Patters
SHUNNESSA.

——S. 66—*Pu*
aside with conse
judgment debtor—
debtor —Suit agai
If maintainable.

Certain property was sold in execution of a money-decree against defendants 2 and 3 and purchased by the plaintiff's predecessor in the benami of defendant 1 and was taken possession of by him. The sale was subsequently set aside with the consent of defendant 1 on an application under O. 21, R 90, C. P. Code, filed by defendants 2 and 3 who dispossessed the plaintiff. The plaintiff sued the defendants to recover possession of the property

Held, that the suit was not barred under S. 66, C. P. Code, as it was not really against any person
title under a purchase certified by the Court, as
plated by that section. Defendants 2 and 3

C P. CODE (1908), S. 70.

ment-debtors had revived and there was no subsisting title in him as a certified purchaser. (*Mukherjea, J.*) THAKUR DAS NATH *v.* KESHAB CHANDRA GHOSH.
42 C.W.N. 497.

—Scope—Purchase benami for plaintiff—possessed by certified purchaser—Suit, if

brings a case within the purview of S. 66, C. P. Code, is that there must be a suit against the certified purchaser or anybody deriving title from him, on the

subsequently dispos-
or his representative,
the bar of S 66, C.
continued for twelve
a title quite indepen-
dent of the purchase made at the execution sale. (*Mukherjea, J.*) THAKUR DAS NATH *v* KESHAB CHANDRA. **42 C.W N. 497.**

——S. 66—*Scope—Relief in suit dependent on declaration of title as against certified purchaser—Suit, if barred.*

MUKUND DAS NANDI DALAL *v.* AJIT KUMAR NANDI **67 C L J 320 = A I R 1938 Cal 874.**

——S 68—Transfer to Collector for execution—Effect—Objection to sale—To which Court to be made.
47 AND 68—EXECUTING COURT.
1938 O W N. 758.

—Revenue Manual, Rr. 998 and
mmissioner setting aside sale on
by rules—Jurisdiction of Civil

is transferred to the Collector for execution under S 68, C. P. Code, the jurisdiction of the

Hasan, JJ.) RAM CHANDRA *v* MAKHDOOM SINGH.
172 I.C. 655 = 1938 O L.R 21 = 1938 O W N 40 = 1938 O A 26 = 10 R O 193 = A I.R. 1938 Oudh 62.

——S 70—*Sale by Collector—Acceptance of bid after receipt of order of High Court staying proceedings—Validity—Cancellation—Legality.*

Where a Collector accepted a bid after the receipt of the order of the High Court staying proceedings, the
ay and
F.C.)

——S. 70 (1)—*Rules framed under by C. P. Government R. 11 (ii)—Procedure to be followed after bid—Collector, if can ignore last bid and hold informal sale himself.*

matters as are provided for in S. 115, C. P. Code. (*Greenfield F.C.*) SITARAM v. RATANLAL.

——S

by S 16

C. P. CODE, S. 51 (*e*) 1938 A L J. 444 (F.B)

——S 73—*Appeal—Order between rival decree-holders*

right of.

Certain decree-holders applied for execution of decree in a Court of Small Causes, their decrees being of that Court The Small Cause Court attached the salary of

ble distribution along with other decree-holders in all the money received in the High Court by attachment of the

salary of the judgment-debtor. (*Lobo, J.*) HINDU CO-OPERATIVE BANK v. MAHADEV KALIANJI.

177 I.C. 195=11 R S. 51=A.I.R. 1938 Sind 175.

——S. 73—Applicability — Execution of award

——Ss 73 and 115 and O. 22, Rr. 8 and 12 and S. 28—*Application for ...ts—Maintainability—In... other remedies open—jurisdiction.*

Where an insolvent after adjudication and before discharge presented an application for rateable distri-

——S. 73—*Assets held by the 'Court'—Moneys re-*

Court The moneys so received, while they are in his hands, are "assets" held by such Civil Court. (*Stone C.J.*) JAYANARAYAN v. DHANRAJ

173 I C. 98=10 R.N. 276=A.I.R 1938 Nag. 14.

Manohar Lall J.) JAGDEO SAHU v BHIMRAJ BANSIDHAR. 177 I.C. 269=4 B.R. 803=11 R.P. 138.

C. P. CODE (1908), S. 73.

——**S. 73**—*Assets—Amount deposited by judgment-debtor under O. 21, R. 89—Liability to rateable distri-*

K. Ghose and Edgley, JJ.) CHITTAGONG URBAN CO-OPERATIVE BANK, LTD. *v.* TRADES BANK, LTD. 176 I C 42 C W N. 840=

——**S. 73**—*"Assets"—Preliminary mortgage decree obtained by judgment debtor—Attachment by holder of money decree—Attaching decree-holder obtaining final decree for sale and bringing properties for sale—Sale proceeds—If assets available for distribution—Right of rival money decree-holder against mortgagee (judgment debtor) to rateable distribution.*

mortgaged properties to sale in execution of the final

various processes of the Court have been resorted to, would also amount to assets which would still remain

rateable distribution—Appeal.

An order refusing a prayer for rateable distribution is one under S. 73 and not under S. 47, C. P Code, sub-S. (2) of S. 73 gives the aggrieved party a right to

——**S. 73**—*Rateable distributi... way of—Appropriation of—R... Costs payable under decree—If...*

The holder of a decree who re... by way of rateable distribution c... sum in any way he likes. It is... the decree debt, namely, the amount of the decree proper and the costs awarded, that he is able to get as much as he does get by way of rateable distribution It would be clearly unequitable and unfair... he has received the money that... the satisfaction of the first item... that what he has received goes... every rupee of his debt if the entire decree amount be regarded as a single debt or equally towards the payment of both the debts contained in the decree if the decree amount proper and the costs are regarded as two debts. *(King, J.)* GOPALA RAO *v* LAKSHMINARASAMMA. 1938 M W.N. 1210.

——**Ss. 73 and 47**—*Rateable distribution—Appeal—Question as to* locus standi *of decree holder's agent.*

C. P. CODE (1908), S. 73.

Where the question of rateable distribution is solely between the two rival decree-holders, the decision of

debtor is pre eminently interested and a decision on that question is no doubt one which will also have effect between the decree-holder and the judgment-debtor so far as the execution, discharge or satisfaction of the decree is concerned. Therefore an order of the execution Judge treating an execution application as *ultra vires* holding that the agent who filed it has no *locus standi* is appealable under S. 47. *(Almond, J.C. and Mir Ahmad, J.)* PUNJAB NATIONAL BANK LTD *v.* HUKAM CHAND SHAH. 177 I.C. 872=11 R. Pesh. 39= A.I.R. 1938 Pesh. 63.

——**S. 73 and O. 38, R. 11**—*Rateable distribution—Procedure—Application for execution—Necessity*

before judgment, applied after obtaining his decree to direct the said third person to pay the attached amount

application for execution re attachment of the property need not be applied for if it has already been attached under that order. *(Sharpe, J.)* R. N. PANDAY *v.* MOHAMMAD KASIM KHAN. 1938 Rang L R 565

——**S. 73**—*Sale proceeds held by Sub-Judge, First Class—Power of Senior Sub-Judge to call for them to his Court*

Where sale proceeds are held by the Sub Judge, First

ment debtors—Some of them only common

For rateable distribution it makes no difference in law that the parties are two in one case and three in the

against two of them and a sale is held in execution of his decree, former decree-holder is entitled to rateable distribution in the sale proceeds. *(Ram Lall, J.)* FATEH DIN *v.* DIWAN CHAND. A.I.R. 1938 Lah. 801.

——**S. 73**—*"Same judgment-debtor"—X obtaining decree against firm by serving summons on two persons as partners—Y obtaining another decree against them*

C. P. CODE (1908), S. 73.

two and three others individually—Y bringing certain properties to sale in execution—Right of X to get rate-

Held, that the decree of *X* against the firm was in effect a decree against the two partners individually and consequently they were the common judgment-debtors in the two decrees and *X* was, therefore, entitled

——Ss 73 and 63—*Same property of judgment debtor attached by two Courts of same grade and sold by one—Right of decree holder in other Court to rateable distribution*

S. 73 is to be read together with S 63. Where the

decrees, prior to the actual receipt of the assets, and the decree holders in all such Courts are entitled to rateable distribution under S 73 In such cases no application for execution is necessary to be made to the Court which held the assets, before the receipt of the assets. (*Tek Chand, J*) SIMLA BANKING AND INDUSTRIAL CO, LTD. *v.* INDO SWISS TRADING CO., LTD.

A.I.R. 1938 Lah. 754.

——S. 73—*Scope—If affected by Amending Act IX of* 1937.

The amendment of S. 60 by S. 3 of Act IX of 1937 does not affect the provisions of S 73. Thus a decree-holder has still a right under S. 73 to come in for a share in the rateable distribution of salary attached under a decree, though his suit in which may have been brought after J KEWALMAL *v.* RODRIGUES

11 R.S 31=

——S. 80—*Applicability—M*

the properties mortgaged to Secretary of State under

of a mortgage to which the Secretary of State for India in Council is a party as being a mortgagee of some of the properties under the Land Improvement Loans Act, notice under S. 80, C P. Code, is necessary; and in the absence of such notice the su against him (*Pandrang R* SECRETARY OF STATE FOR NAIDU. 1938 M W N 280=

——S 80—*Compliance—N of validity—Statement of cause of action.*

To state a cause of action it may be sufficient to give a legal description by which a particular cause of

C. P. CODE (1908), S. 80.

District Magistrate, under S. 15 (4) of the Police Act, making a demand of a certain amount of money as an

MULL *v.* SECRETARY OF STATE. 17 Pat 345=

A.I.R. 1938 Pat 556.

——S. 80—*Notice—Contents—Alternative claim not mentioned—If can be claimed in suit.*

lesser claim which is not men- ider S. 80 cannot derogate from have the suit tried on the issue notice. (*Grille, J.*) SECRETARY OF STATE *v.* NAGORAO TANKO.

A I R. 1938 Nag. 415

——S. 80—*Object of notice—Contents—Interpretation—Rule as to.*

The object of giving two months' notice to the which is about iment may, if it ord restitution if without recourse being had to a Court of law in which Government might be mulcted in costs It is necessary to import a little commonsense into notices under S 80 The Court should look at the wording of the notice and interpret it in the light of commonsense It is not necessary for the plaintiff to state in his notice the full details of his claim. When the object of the notice is plain and is achieved, and there has not been any violation of the spirit and intention of S 80, the notice should be treated as valid notice. (*Grille, J.*) SECRETARY OF STATE *v.* NAGORAO TANKO. A.I.R. 1938 Nag 415.

——S 80—*Official Assignee—Suit against, in respect of release of an insolvent's right—Notice, if necessary.*

C. P. Code. as not e deed apacity ject of *h, C.J.* E OF

——S 80—*Official Receiver—Right to notice—Rival creditors—Inter- ver if entitled to*

promissory note by certain assignees of the note, and the debtor filed an inter-pleader suit and where the Official Receiver raised a plea that he ought to have been given notice under S. 80, C. P. tting up of a claim to which a Receiver to be an act purport- his official capacity

C. P. CODE (1908), S. 80.

so as to attract the application of S. 80, C. P. Code. (*Niyogi, J.*) NARAYANCHANDRA *v.* SURENDRANATH. 1938 N.L J. 264 = A I.R. 1938 Nag. 449.

——S. 80—*Strict compliance with—Necessity—Notice to Registrar, Co operative Societies—Proper service—Test.*

The provisions of S. 80, C. P. Code, are imperative and must be strictly complied with. Where a notice to

——S 80—*Suit against Official Receiver of estate for arrears of rent—Notice—If necessary.*

In a suit against an Official Receiver of an esta recovery of arrears of rent notice under S. 80 necessary as omission of receiver to pay rent is n act purporting to have been done by him in his official

Ss. 86 and 87, C. P. Code, relate to an important matter of public policy in India and the express provisions contained therein are imperative and must be observed. Where a suit was brought against the

was obtained and the suit was that the Railway was a co being sued, it was held that ther record to support the contention corporation and that it was directly contrary to the admission of the plaintiff. It was further held that the a suit against dgme ght of C.

The fact that the Railway was allowed to defend the suit on the merits could not amount to a waiver of privilege as the provisions of Ss 86 and 87, C P. Code, are imperative, and having regard to the purpose which they serve, they could not be waived in such a manner. (*Sir Lancelot Sanderson.*) GAEKWAR

from taking the S. 91, C. P. Code taking of the Gr (*Almond, J. C.*)

C. P. CODE (1908), S. 92.

ISHAR SINGH. 10 R. Pesh. 57 = 173 I C. 813 = A.I.R 1937 Pesh. 81.

——S. 91—Scope—Absence of sanction—If bar to maintainability of suit—Failure to raise plea of want of sanction—Effect—Plea in second appeal—If open. *See* TORT—NUISANCE. 1938 M W.N. 262.

——Ss. 92 and 47—*Appeal—Orders for carrying out scheme.*

rs are passed merely for carrying out a are orders in execution, and appeals lie ders under S. 47. (*Mosely and Dunkley,* EIN *v.* U PU. 177 I C 919 = 11 R.R. 184 = A I R. 1938 Rang 363

—*Applicability—Suit by person claiming property against rival trustee—Relief claimed in individual capacity*

individual capacity and not in a representative capacity

trustee nor one for appointing a new trustee nor for vesting any property in a trustee and does not fall under any heads from (*d*) to (*g*) or under head (*h*) of S. 92. A suit by a person claiming to be a mutawalli of a cer- which has that he is entitled to

JAMIAT DAWAT *v.* MOHAMMAD SHARIF A I R. 1938 Lah 869.

——S 92—Applicability—Trust funds deposited with

48 L W. 677 = A.I.R. 1938 Mad 999.

——S 92—*Applicability—Trust properties—Breach of trust by female trustee—Suit by person claiming to succeed to office as next trustee for relief on ground of breach of trust—If falls under section.*

A suit in respect of properties forming the subject-

ublic purposes of temple— to mainta

C. P. CODE (1908), S. 92.

Although it would be unreasonable to hold, having regard to the evidence in a particular case, that the properties held by the Mahant of a temple belong to any idol or to the temple, or to the members of the *panth*

the obligation to maintain the institution for purposes which can only be regarded as public charitable purposes it may fairly be said that a s

such purposes within the mean
S. 92 is not limited to trusts i
Trusts Act but must certainly i
and Sen, JJ.) DHORIBHAI D
40 Bom L.R. 1041

——S. 92—*'Interest'—Meaning of.*

'Interest' in S. 92, C. P Code, denotes an interest which must be a present and substantial and not a re-

——S 92—*Parties—Suit for removal of trustee—Ijaradar from trustee—If necessary party.*

——S. 92—*Public or private trust—Provisions in favour of both private individuals and public.*

There is no hard and fast rule that, merely because there are certain provisions in favour of private individuals and certain others in favour of the public, therefore, the case falls within or without the class of public trusts to which S. 92, C. P. Code, applies The Court must look to the real substance of the trust and the primary intention of the creator of the trust in every case. (*S. K. Ghose and Patterson, JJ*) MASSIRAT HOSSAIN *v.* HOSSAIN AHMAD CHOWDHURY.

176 I.C 842=11 R C. 182=42 C.W N. 345= A.I.R. 1938 Cal 278

——S. 92—*Public trust—Temple—Mahant—Properties held by—Dedication—Evidence of.*

Public user for a long period without objection can be relied upon as strong evidence of a publ
Where properties have been acquired by a *mahant* of a temple and have descended from chela there is a presumption that they ha
dedicated to religious uses. (*Broomfield and S*
DHORIBHAI DADABHAI *v* PRAGDASJI.

40 Bom L R. 1041=A.I.R 1938 Bom 471.

——S 92—*Removal of mutawalli—Discretion of*

bursements of the trust for which he was prosecuted and acquitted only on a technical ground. He had disobeyed the directions of the settlor regarding the disposal of the income of the trust property. He had a *locus penitentiae* but had not profited by the warning which

received their dues under the trust deed for many years and payments were in arrears. The lower Court, while

C. P. CODE (1908), S. 92.

finding mutawalli grossly negligent, was influenced by sentiment and sympathy and merely warned him.

Held, that the mutawalli had shown by his conduct to be entirely unfit to administer wakf and should be

on of lower Court not being in-
soning or exercised judicially,
by the High Court. (*Mosely*
MYE DIN *v.* U MYA.

177 I C. 234=11 R R. 107= A.I.R. 1938 Rang. 166.

after the institution by three persons as plaintiffs, two die, the suit does not become defective or incompetent. There is no provision at all in the Code for recourse being had to the advocate-general or collector during the
of a suit or proceedings in appeal The consent
idition of the valid institution of a suit and has
rence to any other stage. The persons who filed
within the leave of the advocate-general or collector are not to be deemed to be one plaintiff and as

——S. 92—*Scope—Public charitable trust—Management vested in members of family—Dispute among parties—Reference to arbitration—Award dealing with management and laying down scheme for future management—Suit to make award decree of Court—If falls under S. 92.*

Where an arbitrator is required to investigate the nature of the management of various charitable trusts by the parties in management thereof and is also asked to lay down a scheme for the future management of the

view of S. 92, C. P. Code,
ing is to safeguard the interests of the institutions or obtain directions for their proper management. A suit
cannot
been
Row,

1938 M.W.N. ... 742= (1938) 2 M.L J. 972.

——S. 92—*Suit under—Maintainability—Allegation as to breach of trust—Necessity.*

The argument that in the absence of an allegation of breach of trust in the plaint the suit is not maintain-
. A suit under that section lies not
any alleged breach of trust, but also
n of the Court is deemed necessary for
the administration of a trust, if it be a trust for public purposes of a charitable or religious nature. (*Mya Bu*

C. P. CODE (1908), S. 93.

and Sharpe, JJ.) M. E. MITCHLA *v.* A. M. MITCHLA. 1938 Rang. L. R 276=177 I.C 851= 11 R.R. 175=A.I.R. 1938 Rang. 339.

——S. 93—*Powers of Collector—Grant of sanction for suit—Jurisdiction to impose conditions—Condition that suit to be filed within two* ... *filed beyond two months—If ba*... *putation—Period of two months* ... *of order or date of receipt of or*...

The Collector exercising unde...

the suit and in respect of the reliefs which are sought and are obtainable in such suit; any other restrictions either in the matter of the institution or in the conduct of the suit would be *ultra vires*. A condition imposed by the Collector that the suit should be instituted within two months is illegal and may be ignored, although if the suit is filed long after the grant of sanction, the Court has a discretion to refuse to pass a decree in the suit on the ground of unnecessary delay In any case, assuming that the Collector can impose such time limit the period would not commence to run until the order of sanction is made known to the parties. *(Venkataramana Rao, J.)* RAMACHANDRAYYA *v.* NARASIMHAM. 1937 M W.N. 1319.

claim in its entirety provided a certain condition is fulfilled and dismisses it in its entirety if that condition is

party in whose favour a decree has been passed may

any other proceeding (*Khundkar, J* GHOSE *v* SAKHI KANTA BEHARA 42 C W N 492

——S. 96—"Decree"—Order under O 41, R 5, refusing stay of execution pending appeal—Appealability. *See* C. P. CODE, S. 2 (2) 40 Bom.L R. 1198.

——S. 96 (3)—Applicability—Oath taken in pursuance of offer to be bound by—Decree thereon. *See* OATHS ACT, S. 11. 172 I C. 421.

——S 97—*Appeal from preliminary decree—Final decree passed during its pendency—Appeal, if competent.*

An appeal filed from a preliminary decree is competent, although during its pendency a final decree is passed but it is not appealed against. *(Addison and Din Mohammad, JJ.)* JOTI PARSHAD *v.* GIRNARI MAL. 40 P L R 123.

——S 98—Difference of opinion among Judges hearing first appeal—Procedure to be adopted *See* LETTERS PATENT (ALL), CL. 27 AND C. P CODE, S. 98 1938 A W R (H C) 712= A.I.R 1938 All 641 (F.B).

C. P. CODE (1908), S 100.

dent is present and pleads judgment against himself. Where both the parties were absent, but the Court acting on the statement of a relative of the appellant who was not however his duly accredited representative and on the facts as disclosed in the evidence on record

when could not be attack- *See* C. P. CODE, O. 26, 1938 N L J. 392

——S. 100.

Concurrent Findings
Discretion.
Error of law.
Finding of fact.
Jurisdiction
Misreading of evidence
Mixed question of law and fact.
New case.
New plea.
Question of fact
Question of law.
Second appeal.

——S. 100—*Concurrent findings—Question of fact* ... *permanent lease of waste*

law that in no circum- ease be granted in respect of waste lands belonging to a trust. The questions is one of degree, depending upon a number of circum- ... estion of fact; where the into any error of law and ule of law in dealing with ty of a permanent lease of waste lands belonging to a trust, the concurrent finding ... Courts that a particular lease was granted able cause cannot be interfered with in

——S 100—*Discretion—Wrong exercise of—Interference—Amendment of plaint.*

Where a judge allowing an amendment of the plaint has proceeded on a wrong view of the law so that he could not have applied his mind to the question whether he should or should not, in his discretion allow the amendment, the High Court would interfere in second appeal though the matter was one in the discretion of the lower Court (*Stone, C J. and Bose, J*) LACHHMANSING *v* MAHENDRA LAL. 175 I.C 728= 11 R N. 72=1938 N L J 198= A I.R 1938 Nag 388.

——S 100—*Error of law—Test—High Court, if can hear appeal on facts.*

There is an error of law when a Court's finding proceeds upon a misconception of the real nature of the issue in the case, when several facts admitted or proved are not considered in their relation to each other and weighed as whole, when a certain legal consequence ... and proved facts ... art of admissible ... point at issue is ... such an error of ... 100, C. P C.

C. P. CODE (1908), S. 100.

Where therefore lower Court's judgment is based on an error ... sitting ... *J.)* ... I ...

erring

Where the lower appellate Court errs in law in holding on the facts of a case that the descent has not been from preceptor to disciple, the finding can be interfered with in second appeal. (*Dalip Singh and Skemp, JJ.*) GHULAM MOHY UD DIN *v.* MT. HAJRAN BIBI. **178 I C. 58=A.I.R. 1938 Lah. 182.**

——S 100—*Finding of fact based on weak evidence—Finality.*

...

——S. 100—*Finding of fact—Evidence—Failure to refer to—Interference.*

Where the High Court is not satisfied with the finding of the fact on the point of possession because the appellate Court had not categorically made reference to the statements of the defendant's witnesses whom it purported to disbelieve nor had it made any reference to the witnesses of the plaintiff on the question of possession, ...

——S. 100—*Finding of fact—Failure to consider part of evidence—Interference.*

...

based ... justifia... C. P. C...

of High Court.

The High Court, in dealing with second appeals under S 100, C. P. Code, is confined strictly to questions of

C. P. CODE (1908), S. 100.

law, and is bound to accept the lower Court's findings ... jurisdiction to reverse ... the lower appellate ... they are vitiated by ... dealing with the ... a different view ... *wala and Varma, JJ.)* JOALA PRASAD SINGH *v.* CHANDERJCT KUER. **17 Pat 430=4 B R. 656=175 I C. 783=11 R.P. 47=1938 P.W.N 250=19 Pat L T. 281=A I R 1938 Pat 278.**

——S. 100—*Finding of fact—Finality—Question whether tenancy is permanent or not—Lower appellate Court not weighing and discussing evidence—Interference in second appeal.*

...

possession.

A finding of adverse possession must, to some extent, be a finding of fact, but more particularly in a case where the judgment of the lower appellate Court is a judgment of reversal, the High Court may inquire into the method adopted by the lower appellate Court in coming to its conclusion, and enquire whether the adverse possession as found is supported by evidence and whether the finding which is said to be based on the ... wn from the settlement ... (*McNair, J.*) BERO... AH AKAND. **... 159=66 C L J. 455=A I R 1938 Cal. 117.**

——S. 100—*Finding of fact—Finding as to status ...*

... raiyats and they have ... are findings of fact. ...) PRODYOT COOMAR ... **A I R 1938 Cal 724.**

—*Finding on point not* ... —*Finality.*

...

175 I C 91=4 B R 521=10 R P 580=1938 P W N. 741=A I.R. 1938 Pat 181.

...00—*Finding of fact—Fraud in connection ... of sale proclamation—Non service of pro... Finding as to not based on evidence—*

... as to the existence of fraud in connection with the service of a sale proclamation or as to non-service of the same, which is not based on evidence is not binding in second appeal and can be interfered with.

C. P. CODE (1908), S. 100.

(*Courtney Terrell, C.J. and James, J.*) RAMKESHWAR SINGH *v.* KESHO PRASAD SINHA. 1938 P.W.N 202=19 Pat L T. 645= A I R

——S 100—*Finding of fact*—
Intention to separate from joint fa
tition—Finding that institution of
tary act and did not evidence clear intention to separate

unequivocal intention on the part of the member concerned to separate from the other members of the joint family, is one of fact, and the High Court in second

documents.

A finding of the lower appell
failure to appreciate the true l
necessity in ancient documents
other documents of recent orig
recitals, cannot be supported
and Khandkar, JJ) LAKSH
JAGADISH CH SUR. 177 I C 477=11 R C 247= 42 C.W N. 837=A I R 1938 Cal. 541.

——S 100—*Finding of fact—Interference—Find-*

(*Skemp, J*) GHULAM MOHA
176 I C. 464=11 R L

——S. 100—*Finding of fact—Interference Lower Court omitting to consider circumstances erroneously holding them to be inadmissible.*

A finding on a question of fact is open to challenge in second appeal if the lower appellate Court has in arriving at that finding refused to consider certain circumstances erroneously holding them to be either inadmissible or irrelevant (*Beckett, J*) KRISHAN CHAND *v.* KANSHI RAM 40 P L R 705

——S. 100—*Finding of fact—Interference—Mistaken view of burden of proof.*

Where the evidence has been viewed in the lower appellate Court on a mistaken application of the rule as to burden of proof, its judgment is vitiated on a point of law and is open to attack in second appeal (*Beckett, J*) HARCHAND *v* HIRA LAL. 40 P L R. 682= A I.R 1938 Lah 760.

——S 100—*Finding of fact—Interpretation of facts found by lower Court.*

C. P. CODE (1908), S. 100.

Where the lower Court has arrived at a certain finding of facts, and the facts are clear but the dispute relates not to the facts but to interpretation of facts by the

execution of document is genuine.

presence of the thumb marks on the document in question, but there are certain other attending circumstances which have influenced his mind while formulating his conclusions that execution of document is genuine, his
d with in second appeal.
ad, JJ) HUKAM CHAND
A I R 1938 Lah 357.
fact—Suit for damages for
as absence of reasonable and
of malice—Interference in

1938 P.W N 783

——S 100—*Jurisdiction—Incompetence*

PRASAD SINGH. 1938 A L J 988= 1938 A.W R (H C) 682=1938 R D. 829.

——S 100—*Misreading of evidence—Correction in*

has been set aside
und that can have
misapplication of
in second appeal.
T JAIWANTI

within the meaning of S. 14, Limitation Act, is a mixed question of law and fact and can be questioned in second appeal, provided that the lower Court's findings of fact are not interfered with 36 I C. 702, followed. (*Skemp, J*) MAYA SINGH *v* UDHAM SINGH. 40 P L R. 631=A I.R 1938 Lah 704.

——S 100—*New case—Interference—Lower Court basing judgment on new case made out for first time in appeal—Failure to adequately consider, more important aspect—Effect of the case*

Where a Judge sitting in appeal bases his judgment on a new case made out for the first time in appeal, and it is clear that the new case has coloured and influenced his consideration of the facts and his decision on another aspect of the case, which, although treated by the appellate Court as a minor aspect, turns out in fact to be the most important aspect of the case, and it appears that the Court has not adequately considered that as

C. P. CODE (1908), S. 100.

and consequently has arrived at a wrong conclusi judgment is liable to be set aside in second (*Davis, J C. and Mehta, J.*) ARAB JHANGLU v JAL SHAH. A I.R. 1938 Si

——S. 100—*New plea—Plea of estoppel—If raised for first time.*

second appeal. (*Manohar Lall, J.*) BINDESHWARI PRASAD v. LAL MUNGARI LAL. 10 R P. 315 = 172 I C. 198 = 1937 P.W.N. 762 = 18 Pat L T 814 = A I.R. 1937 Pat. 642

——S 100—New plea—Plea of want of sanction under S 91, C. P. Code—If may be raised in second appeal. *See* TORT—NUISANCE. 1938 M.W N. 262.

——S 100—*New plea—Point of law—If can be raised.*

A point of law on the fact lower appellate Court may time in second appeal. (*Ben Collister, Bajpai and Ga* PANDEY v. NANDA BUDHA I L.R. (193 1938 A.L R 1938 A.W.R. (1938 R D. 628 = A.I R. 1938 All. 396 (F.B).

175 I.C. 866 = 11 R.B. 10 = 40 Bom L R 359 = A I R. 1938 Bom 291.

——S. 100—*New plea—Question of law—If can be raised.*

can be raised.

es fa

A finding that a house belonged to a person is a pure finding of fact and as such it is not within the jurisdic-

C. P. CODE (1908), S. 100.

possession.

It is a question of fact whether adverse possession has been proved, but where the decision is whether adverse possession shall be inferred from facts, it is not a question of fact; it is a question of the legal inference to be drawn from facts. (*Davis, J. C. and Mehta, J.*) TAHILRAM TACKCHAND v MT. MIRAL. 176 I C. 549 = 11 R S 22 = A.I.R. 1938 Sind 132

——S. 100—*Question of fact—Question as to fraud—Finding on—Finality.*

——S 100—*Question of fact—Question whether pro-*

1938 P.W.N 259 = 19 Pat L T. 193 = A I R 1938 Pat. 372

——S. 100—*Question of fact—Rebuttal of statutory presumption.*

with findings of fact of the lower appellate Court, legal inferences have been drawn from hether, for instance, the possession is whether a transfer is made with intent

——S. 100—*Question of law—Inference from facts—Interference.*

C. P. CODE (1908), S. 100.

The prc
tion of
SINGHA
11 B.

facts.
Where certain facts are found and an inference is

to this that the inference drawn from such
must be one which necessarily flows from it. (*Fazl Ali, J*) NARAIN PANDE *v.* GAYA RAI. 174 I C. 388 = 4 B R 423 = 10 R P 510 = 19 Pat L.T. 398 = A I.R. 1938 Pat. 147.

——S 100—*Question of law—Inference from proved facts—Interference.*
Where a Court is dealing with the question as to

appeal whether the facts found by the lower Court justified the conclusions in law that they have drawn. (*Davis, J.C and Mehta, J*) VIRANBAI *v* PARMANAND JHANGALDAS. A I R 1938 Sind 206

——S 100—*Question of law—Legal inference from proved facts*
The proper legal inference to be drawn from the proved facts of a case is a point of law. (*Broomfield and Macklin, JJ.*) BABASAHEB APPASHEB *v.* LAXMA NAPPA RAMAPPA. 40 Bom.L R 1015=

——S 100—*Question of law—Question, if gone had lost its character as such*
The nature and quantum of evidence required to prove

C. P. CODE (1908), S. 104.

——S 100—*Question of law—Question of onus.*
...s not arise every time an infer... of proved facts. It can only ...rence is itself a question of law ...Where the onus is used as the

——S. 100—*Second appeal—Dismissal of appeal under O. 41, R. 11—Right of second appeal.*
The mere fact that an appeal is dismissed summarily

...he case are not dealt

——S. 100—*Second appeal—Order of abatement of appeal.*
An order that the appeal abates not only with regard ...ondent who has died but with regard to all ...dents, comes within the definition of ...l as such is appealable (*S. K. Ghose and Patterson, JJ.*) SABITRIBAI *v.* JUGAL KISHORE. 43 C W N 41 = A I R 1938 Cal. 639.

——S. 100—*Second appeal—Summary dismissal of appeal under O 41, R 11—Second appeal—If lies.*
Quaere—Whether a second appeal lies to the High Court against the dismissal of an appeal summarily under O. 41, R. 11 C. P Code? (*Manohar Lall, J.*) CHOTOO LAL *v.* MST BIBI SEKINA 19 Pat L T. 210 = A I R. 1938 Pat. 608.

——S. 102—*Applicability—Money suit bona fide*
...s not apply to a suit *bona fide* ...uit although the *only* cla... ...d by the plaintiff is a *money* ... KALIPADA BHATTACHARJEE *v.* ... L R (1938) 2 Cal 21 = ...C 681 = 66 C L J 541 = ... A I.R. 1938 Cal. 272.
Suit for money and for

...Code, bars a second appeal in suits for money, if the claim is merely to recover ... in addition, the suits are also, and ..., for an injunction, a second appeal would not be barred. (*Horn and* ...) AUDIAPPA CHETTI *v* TALUK BOARD ... 48 L W 512 = 1938 M W.N. 931 = ...1938 Mad 941 = (1938) 2 M L J 689.

Applicability—*Order in contentious proceedings under* S. 295, *Succession Act*, *See* C. P. CODE, O 41, R. 1. AND S 104. A I R 1938 Sind 36 (F B.)

——Ss 101 and 105 (1)—*Return of plaint for want of jurisdiction—Remand by appellate Court—Decree—Dismissal of appeal—Second appeal—Competence—Question of jurisdiction—If can be raised*
In a suit brought in Munsif's Court the defendant pleaded that the Civil Court had no jurisdiction ... amplified that plea by arguing that the ...

had exclusive jurisdiction. The Munsif accepted this argument and ordered the plaint to be returned to the plaintiff for presentation to the proper Court. A first appeal was brought and the appellate Court held that the Civil Court had jurisdiction and remanded the suit for disposal on the merits. The Munsif then decreed the suit and an appeal was brought to the District Judge and the District Judge dismissed that appeal. The defendant then brought a second appeal and took as his first ground that the lower Court had erred in holding that the Civil Court had jurisdiction.

Held, that no appeal lay from the order of the lower appellate Court the first time when the jurisdiction question came before it, but that as the case had been

ASHARFI SINGH I.L.R.

177 I C 450=11 R.A 199

1938 A L J 720=1938

1938 R D 714=

——S. 104 (2) and O 43, R.

Reversal in appeal—Second Revision.

relates solely to the question of jurisdiction, it can be taken up in revision

GULZARI SINGH v. R

177 I C 131=

1938 O A

1938 O.W

——S. 105 (1)—Q

raised. *See* C. P. Co

1938 A

——S 105 (1) and

appeals under Agra T

ACT, S. 249.

1937 A.L J. 1237.

to withdraw the appeal may, in proper cases, transpose the parties, making the respondent-appellant and the appellant-respondent though it is not bound to

——S. 107 and O. 1, R. 10 (2)—Power of Court—Addition of party as respondent in the appeal. *See* C.

P. CODE, O. 1, R. 10 (2) AND S. 107.

1938 M W N. 75.

——S. 109—*Final order—Order dismissing appeal as premature.*

An order dismissing an appeal as premature cannot be said to be a final order within the meaning of S. 109, C. P. Code. (*Thomas, C.J. and Zia-ul-Hasan, J.*)

RAGHURAJ SINGH v. LALA HARI KISHAN LAL

173 I C 865=10 R.O. 231=1938 O L R. 143=
1938 R D 405 (2)=1938 O A 231=
1938 A.W R. (O.C.) 26=1938 O.W N. 331=
A I R 1938 Oudh 107.

——S 109—*Leave to appeal—Validity—Committal for finding of contempt for breach of injunction.*

by any injunc- betted a is of

Whether an order is a final order or not within S. 109 (a) of the C. P. Code depends upon the effect of the

1938 Rang L R. 330=A I R. 1938 Rang. 333.

Customs Act—Appeal to Privy Council—Grant of certificate.

Civil Court was not deprived of jurisdiction in the matter by the Sea Customs Act, and demanded the suit

tions were pending in other provinces.

STATE FOR INDIA v. MASK & CO
1938 M.W.N. 1132=(1938) 2 M L J. 904

—— S. 110.
Affirming decree.
Construction.
Substantial question of Law.
Valuation

——S. 110—*Affirming decree—Variation of in favour of applicant—Right of appeal.*

Where the High Court on appeal enhanc amount decreed by the trial Court to the applica leave to appeal, the variation of the trial Court's is no doubt all in favour of the applicant, and h not have any appealable grievance against such tion, but nonetheless the decree of the High C not one of affirmance The applicant is, ther

KAI
399=
836.

——S 110 — *Affirming decree—Suit comprising*

In cases where parties claiming under various aliena tions are brought before the Court, the mere fact that the rules of procedure permit the claims to be joined in one suit does not justify the decree being single and inseparable decree when th confirms the lower Court's decree in respec

widow who were directed by the decree to surrender possession The High Court by its decree allowed the plaintiff's appeal, but dismissed the appeal of the alienees from the widow of the last male holder The properties involved in each of the two appeals exceeded Rs 10,000 in value.

Court was no High Court as ited parties to ig the appeals together on the ground that the High Court in part Court. (*Varadachariar* v. LAKSHMAYYA.
=1938 M.W N. 439=
I R 1938 Mad. 598=
(1938) 1 M.L.J. 492.

S. 110 *Affirming decree—Leave—Grounds.*

Even if the decree of the High Court affirms the decree of the Subordinate Judge, where the appeal involves substantial questions of law and the value of the subject matter of the suit and of the appeal is above Rs. 10,000, the High Court is justified in granting leave to appeal to the Privy Council (*Sir Lancelot*

——S 110—*Affirming decree — Several subject-matters involved in suit—High Court decree confirming decree of lower Court in respect of some but varying it in respect of others—If reversing judgment—Leave to*

or is not an affirming decree under S 110, C. P Code. A single decree may comprise several decisions, and each decision may relate to a distinct subject matter The

of future suits—If enough.

Under S 110, C P. Code, the question whether a decree involves indirectly a claim or question respecting property the value of which is Rs 10 000 or upwards, must be decided with reference to actual circumstances at the time and not to circumstances, which are remote, y that future of the property at some time A SINGH v. C W N 298. *be construed valuation*

had exclusive jurisdiction. The Munsif accepted this argument and ordered the plaint to be returned to the plaintiff for presentation to the proper Court. A first appeal was brought and the appellate Court held that the Civil Court had jurisdiction and remanded the suit for disposal on the merits. The Munsif then decreed the suit and an appeal was brought to the District

Held, that no appeal lay from the order of the lower appellate Court the first time when the jurisdiction question came before it, but that as the case had been

Reversal in appeal—Second appeal — Competency—Revision.

relates solely to the question of jurisdiction, it can be taken up in revision. (*Zia-ul H*
GULZARI SINGH *v* RAM ADHI
177 I.C 131=11 R O 2
1938 O A 618=19
1938 O.W N. 801=

——S. 105 (1)—Question of
raised. *See* C P CODE, Ss. 1C
1938 A.L.J. 720

——S
appeals ur
ACT, S. 2

s to an appeal.
withdraw his

the respondent has obtained any right under the appeal it is not open to the appellant to withdraw his appeal without permission. The Court, when granting leave to withdraw the appeal may, in proper cases, transpose the parties, making the respondent-appellant and the appellant-respondent, though it is not bound to

——S. 107 and O. 1, R. 10 (2)—Power of Court—Addition of party as respondent in the appeal. *See* C.

P. CODE, O. 1, R. 10 (2) AND S. 107.
1938 M W N. 75.

——S. 109—*Final order—Order dismissing appeal as premature.*

An order dismissing an appeal as premature cannot be said to be a final order within the meaning of S. 109, C. P. Code. (*Thomas, C.J. and Zia-ul-Hasan, J.*)

A.I R. 1938 Oudh 107.

——S. 109—*Leave to appeal—Validity—Committal for finding of contempt for breach of injunction.*

such a criminal nature as to prevent an appeal. (*Lord Porter.*) BANNERJEE *v.* KUCHWAR LIME AND STONE CO. LTD. 19 Pat L T. 857=1938 P W N. 895= A.I R 1938 P.C 295 (P.C.).

——S 109 (a)—*Final order—Test.*

Whether an order is a final order or not within S. 109 (a) of the C. P. Code depends upon the effect of the

1938 Rang L R. 330=A I R 1938 Rang. 333.

Applicability—Original civil juris-
for enhancement of rent under
d Act—Application to High Court
orari—Order refusing—Appeal to

certain villages. Such an order is one passed in the exercise of original Civil jurisdiction falling under S 109

——S. 109 (c)—*"Fit case"—Question of jurisdiction of Civil Court—Question as to bar under Sea Customs Act—Appeal to Privy Council—Grant of certificate.*

preliminary issue, upheld the objection and
the suit. In appeal, the High Court held that
Civil Court was not deprived of jurisdiction
matter by the Sea Customs Act, and demanded

for tr... was ... vince ... in wh...

and one general importance, the case was a fit case to be certified under Cl. (c) of S. 109, C. P. Code (*Varadachariar and Pandrang Row, JJ*) SECRETARY OF STATE FOR INDIA *v.* MASK & CO

1938 M.W N. 1132 = (1938) 2 M L J. 904

—— S. 110.

Affirming decree.

Construction.

Substantial question of Law.

Valuation

——S. 110—*Affirming decree—Variation of decree in favour of applicant—Right of appeal*

Where the High Court on appeal enhances amount decreed by the trial Court to the applicant leave to appeal, the variation of the trial Court's dec is no doubt all in favour of the applicant, and he cannot have any appealable grievance against such variation, but nonetheless the decree of the High Court is not one of affirmance. The applicant is, therefore, entitled to appeal to the Privy Council as of right without showing that some substantial question of law is involved (*Tek Chand and Skemp, JJ*) HAKIM RAI *v.* GANGA RAM.

40 P L R 3..— A I R 1938 Lah

——S 110 — *Affirming decree— ... different subject-matters and different ... —Decree dismissing claim in resp... allowing claim in respect of others- parties—Decree allowing one appea... other—If one of reversal—Leave to ap...*

In cases where parties claiming under various aliena tions are brought before the Court, the m... the rules of procedure permit the claims to ... one suit does not justify the decree being tre... single and inseparable decree when the ... confirms the lower Court's decree in respect ...

another set c... widow of the ...

... ferred one by the plaintiff against the dismissal of part of his claim, and the other by the alienees from the widow who were directed by the decree to surrender possession The High Court by its decree allowed the plaintiff's appeal, but dismissed the appeal of the alienees from the widow of the last male ... properties involved in each of the two app... Rs 10,000 in value

Held, that so far as the decree allowed ... appeal, the decision of the High Court was ... sal and therefore a certificate should issue granting ...

... appeals ... part ... lariar

47 L W. 614 = 1938 M.W N. 439 = 177 I C. 248 = 11 R M. 301 = A I.R 1938 Mad. 598 = (1938) 1 M.L J. 492.

——S. 110—*Affirming decree—Leave—Grounds.*

Even if the decree of the High Court affirms the decree of the Subordinate Judge, where the appeal involves substantial questions of law and the value of the subject matter of the suit and of the appeal is above Rs 10,000, the High Court is justified in granting leave to appeal to the Privy Council (*Sir Lancelot Sanderson*) GAEKWAR BARODA STATE RAILWAY ...

... L R 631 = 40 Bom.L R 811 = 19 Pat. L T. 689 = 174 I C 551 = 1938 M W N 481 = 1938 O W.N 521 = 1938 A L J 488 = 42 C W.N. 705 = 1938 O.L R. 218 = 1938 A W R (P C) 123 = 47 L W. 753 = A I R 1938 P C. 165 = (1938) 2 M.L J. 11 (P.C.).

——S 110—*Affirming decree — Several ...*

... is not an affirming decree under S 110 C P C ... decree is

... R E BOARD, MADRAS ... *v.*

1938 M W N 298 = 47 L W. 393 = A I.R 1938 Mad 631 = (1938) 1 M.L J 487.

——S 110—*Construction—"Indirectly"—Possibility of future suits—If enough.*

Under S 110, C. P. Code, the question whether a decree ... question respecting ... 0 000 or upwards, ... ctual circumstances ... which are remote, ... possibility that future suits as to all or part of the larger extent of the property alleged to be concerned ... tuted at some time ... d (*Costello, Ag C.* ... ANDRA SINGH *v* ... 42 C W N 298.

... 0 *if to be construed* ... *uation less*

C. P. CODE (1908), S 104.

had exclusive jurisdiction. The Munsif accepted this argument and ordered the plaint to be returned to the plaintiff for presentation to the proper Court. A first appeal was brought and the appellate Court held that the Civil Court had jurisdiction and remanded the suit for disposal on the merits. The Munsif then decreed the suit and an appeal was brought to the District

——S. 104 (2) and O 43, R 1—*Return of plaint—Reversal in appeal—Second appeal — Competency—Revision.*

Where an order returning a plaint for presentation to proper Court, is reversed in appeal, no further appeal lies against that order in view of S. 104 (2), C.P. Code, read with O 43, R. 1 But as the matter is one which relates solely to the question of jurisdiction, it can be taken up in revision (*Zia-ul-*

GULZARI SINGH *v* RAM ADH

177 I.C 131=11 R O

1938 O A 618=1

1938 O W N 801=

——S. 105 (1)—Question of jurisdiction—If can be raised. *See* C. P. CODE, Ss. 104

1938 A.L J. 720=A

——S 105 (1) and (2)—Appl appeals under Agra Tenancy Act, ACT, S. 249.

1937 A.L J. 1237.

——S. 107 and O. 23, R 1—*Applicability—Appeal—Right to withdraw—Memo. of objection by respondent—If bar to withdrawal—Power of appellate Court to permit withdrawal of appeal—O. 41, R. 22 (4).*

in any way improved by S 107, C. P. Code, which merely confers on the appellate Court the powers of an original Court, but none on the parties to an appeal. But an appellant is entitled as of r appeal, provided that the respon any interest thereunder. The fact objection by the respondent is no in view of the provisions of O. the respondent has obtained any right under the appeal it is not open to the appellant to withdraw his appeal without permission. The Court, when granting leave to withdraw the appeal may, in proper cases, transpose

——S. 107 and O. 1, R. 10 (2)—*Power of Court—Addition of party as respondent in the appeal. See* C.

C. P. CODE (1908), S. 109.

P. CODE, O. 1, R. 10 (2) AND S. 107.

1938 M W N. 75.

——S. 109—*Final order—Order dismissing appeal as premature.*

An order dismissing an appeal as premature cannot be said to be a final order within the meaning of S. 109, C. P. Code. (*Thomas, C.J. and Zia ul-Hasan, J.*)

person so inhibited in breaking the injunction is of such a criminal nature as to prevent an appeal. (*Lord Porter*) BANNERJEE *v.* KUCHWAR LIME AND STONE CO. LTD. 19 Pat L T. 857=1938 P W N 895= A.I R. 1938 P C 295 (P.C.).

——S. 109 (a)—*Final order—Test.*

Whether an order is a final order or not within S. 109 (*a*) of the C. P. Code depends upon the effect of the he rights of the appellate Court has a good and t remains is to upon the final determination of the defendant's liability, the order is

1938 Rang L R. 330=A I R 1938 Rang. 333.

——S 109 (b)—*Applicability—Original civil jurisdiction—Proceedings for enhancement of rent under Madras Estates Land Act—Application to High Court for writ of certiorari—Order refusing—Appeal to*

of the Madras Estates Land Act enhancing the rents of certain villages. Such an order is one passed in the

(1938) 2 M L J. 164

——S 109 (c)—"*Fit case*"—*Question of jurisdiction of Civil Court—Question as to bar under Sea Customs Act—Appeal to Privy Council—Grant of certi-*

eal, the High Court held that the Civil Court was not deprived of jurisdiction in the matter by the Sea Customs Act, and demanded the suit

C. P. CODE (1908), S. 115

Other remedy open.
Powers of Court.
Subordinate Court.

——S 115—Amendment of decree — Substantial amendment—If revisable. *See* C P. CODE, Ss. 152 AND 115 1938 A M L J 88

——S., 115—Applicability—Order of Civil Court under S. 476 B, Cr. P. Code—Revision—Procedure—If governed by S 115 or S. 439 Cr P Code—Nature of proceedings. *See* CR P. CODE, S 439.

to set ...
See B.

A I R. 1938 Pat 21 (S B.).

——S. 115 — *Applicability — Presidency Small Cause Court*

S. 115, C. P. Code, applies to suits and proceedings in the Presidency Small Cause Court. 41 Cal 323, Doubt but Foll (*Lort Williams, J*) MAHOMED YUSUF *v.* ABDUL MAJID I L R (1938) 2 Cal. 162=178 I C. 111=42 C W N 602=A.I R 1938 Cal 671

——S. 115—Arbitration—Setting aside of award and supersession of arbitration—If a case decided. *See* C. P. CODE, S. 115—CASE DECIDED 1938 A L J 813 (F B.)

——S 115—*Award—Revision—Powers of Court*

The powers of a Court of revision are strictly confined within the limits prescribed by S. 115, C P. Code, and, unless a judgment is vitiated by any of the defects specified therein, no interference with it can be made by the revising Court This principle is all the more applicable in cases of revision from an order making an award a rule of Court. (*Addison and Din Mohammad JJ.*) TEJA SINGH *v* ATMA SINGH. 177 I C 351=11 R L 299=40 P.L R. 651=A I R 1938 Lah. 434

——S 115—*'Case'—If includes interlocutory orders*

The word 'case' used in S 115 is wide enough to include an interlocutory order and the High Court will interfere even in the case of such orders provided they otherwise fulfil the requirements of S 115 (*Bose J*) KRISHNA KUMAR *v* RADHELAL 175 I C 107=10 R N 433=A I R 1938 Nag 210

——S 115—*"Case decided"—Application for stay under S. 7 (1) (a), U P Encumbered Estates Act—Dismissal—Revision.*

The proceeding started by the filing of an application under S 7 (1) (*a*) of the U. P. Encumbered Estates Act is a fresh proceeding and, therefore, a case which terminates as soon as the application is dismissed. There is, therefore, a 'case decided" within the meaning of S. 115, C P Code, justifying interference by the High Court in revision (*Sulaiman, C J. and Harries, J*) BABU RAM *v* MANOHAR LAL I.L R (1938) All 22=173 I C 157=1938 A.L.R 98=10 R A 466=1938 R D 84=1937 A W R 986=A I.R 19...

——S 115—Case decided—Final decision ... cation under O 33, R. 1 *See* C. P. CODE AND S 115. 1938 O ...

——S. 115—*'Case decided'—Order ... as to ... of plaint—When amounts to 'case decided'*

The question whether an order allowing an amendment of the plaint is a 'case decided' depends upon the facts of the particular case Where a plaintiff is permitted to amend his plaint in order to sue on an entirely different legal relationship between himself and the defendant from that relied upon in the original plaint, and when the entire nature of suit is sought to be altered, ... dment is a 'case decid... has been withdrawn ... ferent suit. (*Weston.*) ... D ... 1937 A M.L J. 104.

——S 115—*Case decided—Order giving leave to defend conditionally under O 37, R. 3—Revision*

An order giving leave to defend conditionally under O 37, R. 3, C. P. Code, is an interlocutory order and does not amount to a "case decided" within the purview of S 115, C. P Code Even assuming the order not to ...

C P. Code (*Addison and Abdul Rashid, JJ*) MANOHAR LAL *v* KAROBAR KHANDAN MUSHTARKA I L R (1938) Lah. 289=177 I C. 778=10 R L 361=40 P L R. 69=A I R 1938 Lah 548.

——S. 115—*Case decided—Order holding certain reliefs claimed as time-barred.*

An order by Court holding the suit of a plaintiff time-barred in respect of certain reliefs claimed by him is a 'case decided' to that extent (*Din Mohammad, J.*) DIWAN CHAND *v.* BEHARI LAL. A I R. 1938 Lah 507.

——S. 115—*Case decided—Order under O. 9, R. 13 setting aside* ex parte *decree—Revision.*

An order purporting to set aside an *ex parte* decree under O. 9, R 13 is an order deciding a case within the meaning of S 115, C. P Code, and revision therefore lies The fact that an appeal lies against an order made under O 9, R. 13 refusing to grant an application to set aside an *ex parte* decree and that no appeal lies against an order granting an application to set aside a decree does not exclude the remedy by revision in the latter case, much more restricted though the remedy by revision is. (*Davis, J C and Lobo, J*) ZENAB *v.* MAHOMED HAJI ALLAHDINO. 32 S L R 703=174 I C 572=10 R S 264=A I R 1938 Sind 76.

——S 115—*'Case decided'—Setting aside of award and supersession of arbitration—Revision—Competency.*

A Court cannot be considered to have decided a case within the meaning of S 115 C. P Code, where it has set aside the award and superseded the arbitration pending a suit which is consequently to be tried by the Court (*Bennet, Ag C J, Ismail and Verma, JJ*) GOVIND DAS *v* INDRAWATI 1938 A L J. 813=I.L R 1938 All 805=177 I C 981=11 R A 238=1938 A.W.R (H.C 605=1938 A L R 804=A I R 1938 All 557 (F.B.).

——S 115—*Case decided — Subordinate Court—Order by District Judge under S 36, Legal Practitioners Act declaring person tout—Revision—Jurisdiction of High Court—Interference—Grounds—Cr P. Code, S 439—Government of India Act, S 224 (2).*

S 36 of the Legal Practitioners Act confers a special ...

Cr P Code does not apply to such a case. Nor can it be revised under the Government of India Act. 193... The jurisdiction to revise is, however of an e... character and cannot be invoked except in ... of justice. If the Judge in passing the

C. P. CODE (1908), S. 115.

clear conception of the law on the subject or if he has failed to apply the law to the facts of the case and bases his finding on mere suspicion or conjecture, the High Court would interfere with the order. (*Abdur Rahman, J.*) SOMANNA, *In re.*
I L R 1938 Mad. 988 = 177 I C. 456 =
11 R M 331 = 1938 M.W.N 426 = 47 L W. 578 =
A.I.R. 1938 Mad. 631 = (1938) 2 M L J. 100

——S 115—Court fee—Appeal requiring *ad valorem* court fee valued and miscellaneous appeal—Application ... and for ... ll court. COURT. ORISSA)

... T. 864

——S 115—*Court fee—Decision as to—Revision—Decision favourable to plaintiff and decision unfavourable to plaintiff—Distinction—Jurisdiction—Refusal to exercise*

The High Court has power to interfere and will interfere in revision against an erroneous decision of the trial Court adverse to the plaintiff in the matter of Court-fee. The question of court fee is not a matter which ...

Where, however, the decision is in favour of the plaintiff, it is not open to the defendant to apply to the High Court in revision, because in the first place he is not a party to the dispute between the Crown and the plaintiff, and, secondly, he has a remedy, should the decision on the merits be against him in bringing the matter of the court fee duty to the notice of the appellate Court under S. 12 of the Court-Fees Act, and, thirdly and ... and the defen... l to exercise its ...rits. (*Courtney-... r Lal, JJ*)
RAMKHELAWAN SAHU *v* BIR SURENDRA SAHI.
16 Pat 766 = 172 I C 810 = 4 B R 178 =
10 R P 349 = 18 Pat L T. 977 =
A I.R. 1938 Pat 22 (F B).

——S 115—*Court-fee—Order of Court calling upon plaintiff to make good deficiency in court-fee—Revision, if lies.*

Where the trial Court requires the plaintiff to make ...

tions under that section. (*Bhide, J*) PEOPLES BANK OF NORTHERN INDIA *v* KANAYA LAL.
I.L R 1938 Lah 377 = 176 I C 764 =
11 R.L. 231 = 40 P L R 1039 =
A.I.R. 1938 Lah. 80.

C. P. CODE (1908), S. 115.

——S. 115—*Court fee—Order demanding additional court fee for memorandum of appeal—Revision—Order favourable to appellant—Distinction*

An order demanding additional court fee on a memorandum of appeal is revisable under S. 115, C. P. Code, as it amounts to a refusal to exercise jurisdiction; but an order accepting the court fee paid as sufficient is not open to revision as then there is no refusal to proceed with the appeal. In such a case jurisdiction is not ... her side dammified. (*Stone, C.* ...) BALAJI DHUMNAJI *v.* MST. ...
I L.R. 1938 Nag 106 =
0 R N 298 = 1938 N.L J. 1 =
A I R 1938 Nag 122 (F.B).

——S. 115—*Declaration as* ex parte—*If revisable—Subsequent* ex parte *decree, not appealed against—Remedy—Proper procedure*

Where the petitioners were declared *ex parte*, even if the order was wrong on the merits, the High Court has no jurisdiction under S 115, C.P. Code, to interfere with such an order Where a decree is passed after declaring certain persons as *ex parte* the proper procedure for those persons is to have preferred an appeal against the decree and not to come by way of revision ...

——S 115—*Defective judgment—Interference.*

... of ... nd ... w ... es ... n- ... r- ... as ... n-
sidered finding of a lower Court and that interference in revision was necessary (*Bose, J.*) KISANGOPAL *v.* UMRAO KESHEO RAO. 175 I C 430 =
10 R N. 456 = A I R 1938 Nag. 216.

——S 115—Discretion—Wrong exercise of discretion under S. 5, Limitation Act—Interference. *See* LIMITATION ACT, S 5 19 Pat L T. 309.

——S 115 — *Discretionary orders — Revision—Intervention.*

Where the question relates to the exercise of discretion which is vested by law in the lower Court, except in very exceptional cases, it is not proper for a Court of revision to interfere with the way in which the lower Court has exercised its discretion (*Varadachariar, J*) VENKAYYA *v.* VENKATA RAO. 1938 M W.N. 925 =
48 L W. 517 = A I.R 1938 Mad 979 =
(1938) 2 M L J. 642.

——S. 115—*Error of law.*

A revision petition is incompetent if the question involved is one of law and not of jurisdiction. (*Addison and Abdul Rashid, JJ*) MAHABIR SINGH *v.* JAGAT
40 P L.R 461.

——S 115—*Error of law.*

... where lower appellate Court has committed an ... law in drawing certain presumptions and in ... at certain conclusions it would not afford any ground for revision. (*Addison and Din Mohammad, JJ.*) HUKAM CHAND *v.* RAMJI DAS.
A I.R. 1938 Lah 357.

——S. 115—*Error of law—Decision of question of law—When interfered with — Jurisdiction — Order*

C. P. CODE (1908), S. 115.

under S. 151 made without jurisdiction — Interference.

The High Court will not generally interfere with a decision on a question of law, as the lower Court has

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NAURANGI LAL MARWARI 16 Pat 729 = 10 R P. 320 = 172 I C 225 = 1937 P.W.N. 836 = 18 Pat L.T. 826 = A I R. 1937 Pat. 647

——S. 115—*Error of law—Revision, if competent.*

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—*Orde*

clear c

—*Revision*

The High Court as a Court of revision is not expected to weigh the evidence which is led before the lower Court. But when it is found that there is no evidence at

subject or has failed to apply the law to the facts of the case, it acts illegally, and in any case with material irregularity, justify

in revision. (*Abdur*

In re. I L

1938 M W N

A I R. 19

——S 115—*Illegally or with material irregularity —Order dismissing application as barred by —Disregard of S 4, Limitation and refusal —Revision—Interference.*

Where a Court dismisses a suit or an app the ground of limitation it does not refuse to exercise jurisdiction. On the contrary it takes cognizance of the suit and exercises jurisdiction by holding that on a point of law the suit fails To ignore the plain terms of S. 4 of the Limitation Act is to deprive a litigant of the Statutory privilege given to him by that section, and a refusal to apply the section in a case in which it does apply amounts to exercising jurisdiction illegally and with material irregularity, justify ... interference in revision under S 115, C. P. Code.

VEERAPPA *v.* IRATAPPA.

10 R.B. 529 =

A.I

——S 115—"*Illegally or with material irregularity*"—*Order holding person pauper under O. 33, R 1—Revision—Wrong view as to "necessary wearing apparel" —If justifies interference.*

The High Court has no authority to interfere in revision with an order of a Court declaring a party to be a pauper for purposes of O 33, R. 1, C. P. Code The fact that the lower Court wrongly holds that the ornaments

C. P. CODE (1908), S. 115.

——S. 115—Interference—Grounds—Failure to consider relevant point—If justifies interference. *See* MADRAS HINDU RELIGIOUS ENDOWMENTS ACT, S. 9 (5). A.I R. 1938 Mad 321.

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(*Weston,*)

1938 A M.L J. 97.

——S 115—*Interlocutory orders—Order allowing application for leave to sue in forma pauperis—Revision application by defendant—Interference—Discretion of High Court.*

According to the practice of the High Court of

does lie under S. 115, C. P.

granting leave to a pauper

The fact that the

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(*Dhavle and*

A KUER.

4 B R 598 = 10 R.P. 632 = 19 Pat L T 101 = A I R 1938 Pat 209.

——S 115—*Interlocutory order—Question of jurisdiction—Interference.*

ocutory, the Court will not

a question of jurisdiction

SINGH *v* KUNDAN MAL.

1938 A M L J. 74.

——S. 115—*Jurisdiction—Absence—Appeal incompetent but entertained—Order of appellate Court—*

ginal Court itself without

ode, ought not

to restore an

jurisdiction or founded on

irregularity in the exercise of jurisdiction, although the

t jurisdiction. (*Row*

JHUNJHUNWALA *v.*

178 I C. 41 =

= 19 Pat L T 111 =

A I R 1938 Pat 447

——S. 115—*Jurisdiction—Absence of—Collector's order in appeal under S 23 (2), Mamlatdars' Courts Act setting aside order of Mamlatdar on findings of fact —Revision—Interference.*

The High Court under S 115, C P Code, has jurisdiction to interfere with an order passed by the Collector under S. 23 (2) of the Mamlatdars' Courts Act, setting

BABAJI *v* BALA FAKIRA MAHAR.

I.L R 1938 Bom 259 = 173 I C 808 = 10 R B 381 = 40 Bom.L R. 104 = A I R 1938 Bom 159.

——S 115—Jurisdiction—Absence—Reference under S 18, Land Acquisition Act—Termination by decree in suit declaring acquisition invalid—Subsequent order of compensation under S 48 of Land Acquisition Act—Jurisdiction to make—Revision — Interference. *See* ... S 48 1938 N.L.J

Absence of—S

O. 41, R. 11—

, O 41, R

C. P. CODE (1908), S. 115.

clear conception of the law on the subject or if he has failed to apply the law to the facts of the case and bases his finding on mere suspicion or conjecture, the High Court would interfere with the order. (*Abdur Rahman, J.*) SOMANNA, *In re.*

I L R 1938 Mad 988 = 177 I C. 456 = 11 R M. 331 = 1938 M W N. 426 = 47 L W. 578 = A I.R 1938 Mad 634 = (1938) 2 M L J. 100.

——S 115—"Court"—District Judge and Assistant Judge disposing of appeal relating to amendment of voters under Bombay District Municipal Act—Orders in—Revision. *See* BOMBAY DISTRICT MUNICIPAL ACT, SS. 11 (1) (*c*) (*iv*) AND 22. A.I R 1938 Sind 153.

——S 115—Court-fee—Appeal requiring *ad valorem* court fee valued and miscellaneous appeal—Application by respondent after disposal of appeal and remand for order staying proceedings until payment of full court-fee—Rejection—Revision—Interference. *See* COURT-FEES ACT (AS AMENDED IN BIHAR AND ORISSA) SCH. I, ART. 1 AND SCH. II, ART. 11

18 Pat.L T. 864

——S 115—*Court fee—Decision as to—Revision—Decision favourable to plaintiff and decision unfavourable to plaintiff—Distinction—Jurisdiction—Refusal to exercise.*

The High Court has power to interfere and will interfere in revision against an erroneous decision of the trial Court adverse to the plaintiff in the matter of Court fee. The question of court fee is not a matter which really concerns the defendant, though he may raise that question, and the Court in deciding a qu[illegible] fee is deciding an issue not as between the defendant, but is deciding an issue Crown and the plaintiff. If the decisio[illegible] the plaintiff, it amounts to a refusa[illegible] jurisdiction to try the issues as between t[illegible] the defendant, and is subject to the rev[illegible] tion of the High Court under S 1[illegible] Where, however, the decision is in favour of the plain[illegible]

[illegible]

the court fee duty to the notice of the appellate Court under S. 12 of the Court-Fees Act, and, thirdly and most important, as between the plaintiff and the defendant the trial Court has not refused to exercise its jurisdiction to decide the case on the merits (*Courtney Terrell, C.J., James and Manohar Lal, JJ*) RAMKHELAV [illegible]

——S 115—*Court-fee—Order of Court calling upon plaintiff to make good deficiency in court-fee—Revision, if lies.*

[illegible]

tions under that section. (*Bhide, J*) PEOPLES BANK OF NORTHERN INDIA *v* KANAYA LAL.

I.L.R 1938 Lah 377 = 176 I C 764 = 11 R L 234 = 40 P.L R. 1039 = A I.R. 1938 Lah. 80.

C. P. CODE (1908), S. 115.

——S. 115—*Court fee—Order demanding additional court-fee for memorandum of appeal—Revision—Order favourable to appellant—Distinction.*

An order demanding additional court-fee on a memorandum of appeal is revisable under S 115, C. P. Code, as it amounts to a refusal to exercise jurisdiction; but an order accepting the court fee paid as sufficient is not open to revision as then there is no refusal to proceed with the appeal. In such a case jurisdiction is not affected, nor is the other side damnified. (*Stone, C. J., Bose and Gruer, JJ.*) BALAJI DHUMNAJI *v* MST. MUKTABAI. I L R 1938 Nag 106 = 173 I.C 329 = 10 R N 298 = 1938 N.L J. 1 = A I R 1938 Nag 122 (F.B).

——S. 115—*Declaration as* ex parte—*If revisable—Subsequent* ex parte *decree, not appealed against—Remedy—Proper procedure*

Where the petitioners were declared *ex parte*, even if the order was wrong on the merits, the High Court has no jurisdiction under S 115, C.P. Code, to interfere with such an order Where a decree is passed after declaring certain persons as *ex parte* the proper procedure for those persons is to have preferred an appeal against the decree and not to come by way of revision under S 115 against the order declaring them *ex parte* (*Madhavan Nair, J.*) THAVASIKANNU THEVAR *v.* SANKARALINGAM PILLAI 176 I C 825 = 11 R M 169 = 1938 M W N 17 = A I R 1938 Mad 217.

——S 115—*Defective judgment—Interference*

Where there had not been any real consideration of [illegible]

[illegible] sidered finding of a lower Court and that interference in revision was necessary (*Bose, J*) KISANC[illegible] UMRAO KESHEO RAO. 1[illegible] 10 R N. 455 = A I R [illegible]

——S. 115—Discretion—Wro[illegible] under S 5, Limitation Act—[illegible] TATION ACT, S. 5

——S. 115 — *Discreti*[illegible] *Intervention*

Where the question relates [illegible] tion which is vested by law [illegible] in very exceptional cases, it is [illegible] revision to interfere with the [illegible] Court has exercised its discretion [illegible] VENKAYYA *v.* VENKATA RAO. 48 L W. 517 = A I [illegible]

——S. 115—*Error of law.*

A revision petition is incompete[illegible]

[illegible] not ground for revision. (*Addison and Din Mohan*[illegible]) HUKAM CHAND *v.* RAMJI DAS. A I R. 1938 L[illegible]

——S. 115—*Error of law—Decision of question of law—When interfered with — Jurisdiction*[illegible]

C. P. CODE (1908), S. 115.

(*Wort, A C.J. and Manohar Lal, J.*) VASISTHA NARAIN SINGH *v.* KANDHAI LAL DURGA PRASAD.
177 I C 138 = 4 B R 793 = 11 B P. 129.

——S. 115—*Material irregularity—Dismissal of pauper application as barred by S. 47, C. P. Code—Ir* …

——S. 115—*Material irregularity*— Ex parte *decree —Order setting aside on insufficient grounds—Revision —Interference.*

The applicant sued for a declaration … validly divorced from her husband. … referred to arbitration and extension of … ed until certain date. On that date app… sent through her pleader but the defenda… sent and the reference was superseded. … fixed for hearing for a certain date Again the defendant was not present and an *ex parte* decree was passed The … decree set aside … arance The …

32 S L R 703 = 174 I C 572 = 10 R S 264 = A I R 1938 Sind 76

——S 115—Material irregularity—Objection that pleader engaged by opposite party should not be allowed to appear—Objection accepted in lower Court—Interference. *See* C. P. CODE, S. 151.
A.I.R. 1938 Rang 241.

——S. 115—Miscellaneous proceedings — Orders under S. 3, Charitable and Religious Trusts Act—If revisable. *See* CHARITABLE AND RELIGIOUS TRUSTS ACT S 3 **1938 O W.N. 1054**

——S 115—*New case—Execution of instalment* …

… default clause in the decree and wants to save limitation …

C. P. CODE (19…), S. 115

——S. 115—Order granting discharge to guardian—If revisable. *See* GUARDIAN AND WARDS ACT, S. 41 (3) AND (4). **(1938) M W N 188 (F B.).**

——S 115—*Order rejecting review application—Revision*

… under S. 115, C. P. Code, if no appeal … er of the first … although an … to the District … BABU RAM … 38) All 22 = … I A L R 98 = … – 1937 A W.R 986 = **A I R. 1938 All. 6.**

… ppealable order not … under Ss. 144 and … C P CODE, Ss. 144 **19 Pat L T 118**

——S. 115—*Other remedy open—Interference.*

Although there is no bar to the exercise of powers under S. 115, C. P Code, yet the powers being discre- …

Limits of rule.

High Court will not interfere in revision where there is another remedy open to the party But the other … revision must … allowed by law. … UNG AHMIN *v.* … **938 Rang 360.**

Other remedy—Order refusing delivery … 99—Revision—Interference. *See* C. P. … 103 **18 Pat L T 833.**

——S. 115—*Powers of Court — Amendment of decree*

The Chief Court has power under its revisional jurisdiction to amend a decree so as to make it conform with the judgment (*Thomas, C J and Zia ul Hasan, J.*) …

——S 115—*Powers of Court—Power to act on its own motion*

The Judicial Commissioner's Court in an appropriate …

… *auction purchaser's application for confirmation of* …

… pplication … e matt … *Rao.*

C. P. CODE (1908), S. 115.

——S. 115—*Jurisdiction Court subordinate — District Judge's order declaring person to be tout under S. 36, Legal Practitioners Act—Jurisdiction to revise—Cr. P. Code, S. 439—Government of India Act (1935), S. 224 (2)*

[illegible]

...cope of ... of the High Court is, however, necessarily of an exceptional character, and cannot be invoked except in furtherance of justice. S 439 of the Cr. P. Code has no application to the case, and the order cannot be revised under that section. Nor can the order be revised under the Government of India Act of 1935, by reason of sub-cl. (2) to S. 224 of the Government of India Act of 1935. (*Abdur Rahman, J.*) SOMANNA, *In re.*

I L.R. 1938 Mad 988=47 L.W. 578= 1938 M.W N. 426=177 I C. 456=11 R M. 334= A I R. 1938 Mad. 634=(1938) 2 M L J. 100

——S. 115—Jurisdiction— Failure to exercise — Refusal to enquire claim under O. 21, R 58 *See* C. P. CODE, O. 21, R. 58—ENQUIRY. 1938 A M L J 23

——S. 115—Jurisdiction—Failure to exercise—Refusal to order rateable distribution—Interference. *See* C. P. CODE, SS. 73 AND 115 177 I C 269.

——S. 115—*Jurisdiction—Order allowing rateable distribution—Revision.*

The Court executing the decree has jurisdiction to ...

[illegible]

...sion to give landed property as security instead of cash deposit—Refusal without fixing amount of security and without applying mind to the case—Revision—Interference. *See* C. P. CODE, O. 21, R. 90 (1) (PATNA AMENDMENT), PROVISO (1) (*b*). 17 Pat. 107.

C. P. CODE (1908), S. 115.

——S. 115—*Jurisdiction—Refusal to exercise—Court declining to further proceed with execution on wrong view of law—Revision—Interference.*

If a Court, taking a wrong view of the law, assumes ...

[illegible]

——S 115— Jurisdiction — Wrong exercise of— Erroneous decision on valuation of suit—Interference. *See* COURT-FEES ACT, S. 7 (*iv*) (*c*). 42 C.W.N. 192.

——S 115—*Leave to sue—If revisable.*

An order allowing a person to sue as a pauper is revisable if it otherwise fulfils the provisions of S. 115. (*Bose, J*) KRISHNA KUMAR *v.* RADHELAL

175 I C. 107=10 R N. 433=A.I.R 1938 Nag 210.

——S 115—*Leave to sue* in forma pauperis—*Order granting—Revision—Grounds.*

Where in an application under O 33, R. 1, C. P. Code the lower Court in deciding the question as to whether a cause of action is disclosed as required by cl (*d*) of R. 5 of O 33, does commit an irregularity in relying on a statement made by the defendant contesting the application and in fact in permitting him to be cross examined with a view to elicit such an admission, that would not be a sufficient ground for setting aside in revision an order granting leave to sue *in forma pauperis* where apart from the admission of the defendant there was in fact sufficient material in the plaintiff's allegations to ...

[illegible]

...*Limitation—Order without adjudicating ... mitation—Interference.*

...in interfere in revision in a case which ... it time-barred and where the lower ... an order without adjudicating on the ... al, 651, Rel. on. ... TAL TRADING ...

... I R R. 31 (1)= ... 1938 Rang 87.

...*—Application be-* ...

... of Courts not to ...

[illegible]

... decree holders apply for stay of execution proceedings against the judgment-debtor, and it is not granted, the person aggrieved by such an order is that decree-holder and if he does not choose to agitate it further the judgment-debtor has no *locus standi* to prefer a revision under S. 115 against that order

C P. CODE (1908), S. 115.

(Wort, A C J. and Manohar Lal, J.) VASISTHA

proceedings mentioned in the proposed plaint but makes use of the information obtained therefrom, the use of such information is irregular and it amounts to a material irregularity in the conduct of the proceedings in the lower Court which vitiates the order passed therein.

Per Mackney, J.—Where the execution proceedings have been referred in the plaint, the Court may be entitled to look at these proceedings, but on looking into them, the Court can only discover what defence is likely to be used, it cannot at that stage, consider the validity of that defence (Mya Bu and Mackney, JJ) KARIM v KYAUKTAGA GRANT LTD A I R 1938 Rang 453

——S. 115—*Material irregularity*—Ex parte *decree—Order setting aside on insufficient grounds—Revision—Interference*

The applicant sued for a declaration that she was validly divorced from her husband. The dis[illegible] referred to arbitration and extension of time wa[illegible] ed until certain date On that date applicant [illegible] sent through her pleader but the defendant was not present and the reference was superseded. The case was fixed for hearing for a certain date Again the defendant was not present and an *ex parte* decree was passed. The defendant applied to have the *ex parte* decree set aside alleging various grounds for his [illegible] Judge before whom the case [illegible] application and set aside the *ex* [illegible] ground that his predecessor made [illegible]

A I R 1938 Sind 76

——S 115—Material irregularity—Objection that pleader engaged by opposite party should not be allowed to appear—Objection accepted in lower Court—Interference. *See* C. P. CODE, S 151.

A I.R. 1938 Rang 241.

——S. 115 [illegible] under S 3, revisable ACT S 3

——S 115—*New case—Execution of instalment decree—Application based on default clause—New case* [illegible]

default, the decree holder bases his cause of action on the default clause in the decree [illegible]

C. P. CODE (19[illegible]), S. 115.

——S. 115—Order granting discharge to guardian—[illegible] GUARDIAN AND WARDS ACT, S. 41 (1938) M W.N 188 (F B.).

rejecting review application—

ejecting an application under O.

sion application under S. 115, C P. Code if no appeal lies to it, and it can interfere with the order of the first Court if no appeal lies to the High Court, although an appeal might lie from the first Court to the District Court (*Sulaiman, C J and Harries, J.*) BABU RAM v MANOHAR LAL. I L R (1938) All 22=173 I C. 157=10 R A 466=1938 A L R 98=1938 R D 84=1937 A W.R. 986=A I R 1938 All 6.

——S 115—Other remedy—Appealable order not appealed against—Revision—Order under Ss. 144 and 151—If open to revision. *See* C P CODE, SS 144 AND 151 19 Pat L T 118.

——S. 115—*Other remedy open—Interference.*

Although there is no bar to the exercise of powers under S. 115, C P Code, yet the powers being discre-[illegible]

AHMED JOO. 40 P L R J. & K. 29

——S 115—*Other remedy open—Non interference—Limits of rule.*

High Court will not interfere in revision where there is another remedy open to the party. But the other [illegible] open to the applicant in revision must [illegible] id conclusive remedy allowed by law. [illegible] *and Dunkley, J*) MAUNG AHMIN v. [illegible] A I R 1938 Rang 360.

——S 115—Other remedy—Order refusing delivery under O 21, R. 99—Revision—Interference. *See* C. P. CODE, O. 21, R 103 18 Pat L T 833.

——S. 115—*Powers of Court — Amendment of decree*

The Chief Court has power under its revisional jurisdiction to amend a decree [illegible] the [illegible] RAG [illegible]

A I R 1938 Oudh 107.

——S 115—*Powers of Court—Power to act on its own motion.*

The Judicial Commissioner's Court in an appropriate case can exercise powers of revision on its own motion if [illegible] ilarity [illegible] Court,

A.I R. 1938 Pesh 81.

——S 115—*Revision—Competency* [illegible]

) 113.

An appeal against an order made on an application under S. 144, C.P Code, ought to bear an *ad valorem* court fee (*Henderson, J*) BIRENDRA NATH *v.* SURENDRA NATH. 42 C.W N. 152

——S 144—Order under—Appeal—Court fee.

able on appeals from orders under S. 47, C. P. Code. An application under S 144 does not execute an existing decree, but it unexecutes a decree which had ceased exist. (*Baguley and Mosely, JJ.*) MA HTWE *v* TOKE. 1938 Rang L R. 63

——Ss 144 and 151—*Order under—Appeal—Revision.*

In a proceeding started under S 144, C. P. Code the Court held that S 144 did not apply but grante

[illegible] rights of the [illegible] was capable [illegible] though it was [illegible] or under both [illegible] ion lay against [illegible] RNATH DAS *v* SRIKANT MISSIR. 19 Pat. L T 118= 1938 P W N 310

——S. 144—*Pre emption suit—Order permitting creditors of pre-emptor to withdraw deposit in Court—Reversal—Liability to refund.*

Where the creditors of the pre emptors were parties to an order permitting them to withdraw amount deposited in Court, when that order is reversed, are in justice and equity liable to make restitution and refund the amount withdrawn by them They cannot resist restitution on the plea that they were not parties to the pre emption suit, for the word 'parties' in S 144, C P Code, must be taken to include their representatives and further representative does not mean only a party's legal representative but means [illegible]

releasing half share in property—Decree and sale remaining as a whole—Application by decree holder for compensation—Maintainability.

In execution of a compromise decree against a Hindu father and his sons, joint family property of the father and sons was put up for sale and purchased by the decree-holder, the sale was duly confirmed and full [illegible]

[illegible] joint and several decree and the sale, which itself was not affected, stood as a whole The decree-holder then made an application for [illegible]

the property would not guarantee the title, and the maxim *caveat emptor* applied, (2) that the fact that the sons brought an action for declaration of the invalidity of the decree as against them did not affect the principle of [illegible] had to be considered [illegible] against the sons; [illegible] 144, C. P. Code, could, if at all, be claimed only against the sons and not against the father and that on no principle was the decree-holder entitled to compensation against the father judgment-debtor under S. 151, C. P. Code. (*Wort and Varma, JJ*) PHULCHAND RAM MARWARI *v.* NAURANGI LAL MARWARI. 172 I.C. 225= 16 Pat. 729=10 R P. 320=1937 P W N. 836= 18 Pat L.T 826=A.I.R 1937 Pat 647.

——S. 144—*Scope and object of—Decree entitling party to take charge of institution—Execution—Possession of building in which institution is located also taken under colour of decree—Reversal of decree—Duty to restore possession of building—Plea that building was taken possession of by force or otherwise—If open*

A party taking possession of any thing under colour of his decree is bound to make restitution of everything that he takes possession under colour of the decree on reversal of that decree. Where a party entitled under his decree to hold charge of an institution, also takes

C. P CODE (1908), S. 145.

(*Addison, J*) SHEIKH RAHIM-UD DIN *v.* MURLI DHAR. A I R. 1938 Lah 593.

——S 145—*Father's liability as surety—Son's interest—If can be proceeded against.*

S. 145 permits the execution of a decree (passed against a stranger) against the surety as though it were a decree passed against the surety
a party only for a limited purpose.
father has become liable as surety f
against a stranger, the interest of
taken in execution of the decree.
decree-holder has power to sue the surety instead of taking recourse to execution under S. 145 does not preclude the decree holder seeking a shorter and less expensive remedy of execution under S. 145 (*Stone, C. J and Puranik, J.*) PANDURANG GADIBA KUNBI *v* ABDUL HUSSAIN ISAJI BOHRI 173 I C. 950 = 10 R N. 333 = A.I R. 1938 Nag 148.

——S. 145—Security bond—Procedure for enforcement. *See* SURETY—SECURITY BOND.

——S.
withdraw s
of time

——Ss 148 and 149—*Discretion of C*
for payment of deficit court fee on plaint—Extension—Right of plaintiff to claim

provides for defective documents being retrospectively validated The Court must, however exercise its

——Ss 148 and 149 and O. 20, Rr 3 and 6—*Power to extend time—Existence of jurisdiction—Necessity—Preliminary decree fixing time for payment of deficient court fee—If can be extended.*

To extend time under Ss 148 and 149, C P Code, the Court must have a case before it in regard to which

an end on the pronouncing of the judgment and signing of the s
O 20,
provide
during
the c
Verma, JJ.) BENI PRASAD *v.* OM PRAKASH
177 I C 824 = 1938 A W R (H C) 495 = 11 R A 218 = 1938 A.L R 785 = 1938 A L J 673 = A.I R 1938 All 497

——S 148—Scope—Extension of time of deficient court fee—Jurisdiction to grant is filed. *See* C P. CODE, SS. 2 (2) AND 14.
1937 A L J. 1346 = 1938 A.W.R

C. P. CODE (1908), S. 149.

——S 149—*Appellate Court finding court-fee fixed by trial Court to be insufficient—Duty to grant time.*

Where in the trial Court the defendants themselves had stated that the court-fee was payable on a certain amount and the Court after enquiry had fixed that amount as the proper value of the suit, the appellate
fficient, should
the deficiency.
ovisions of S.
, J) ABDUL

40 P.L R. 33.

——S 149—*Applicability—Decree on payment of court-fee—Court-fee deposited after three years—Execution of decree—Starting point—Limitation Act, Art. 182*

Where in a suit for dissolution of partnership, a defendant is given a final decree for a certain sum on his paying the requisite court fee, the proceedings in that Court do not become final until that Court either

he order
it fee, is
begins
fee was
JU RAM
I. 848 =
I 917 =
1938 A L R. 799 = 1938 A W R. (H C.) 538 = A I R 1938 All. 539.

——S 149 and O 33, R. 15—*Application to sue as pauper dismissed—Court-fee paid beyond limitation but within time granted by Court—Date of institution of suit.*

Where a person files a suit *in forma pauperis* within the period of limitation but his application to sue as pauper is dismissed and he is required to pay court-fee on a date which went beyond the limitation period and the court fee is so paid at a time granted under S. 149, C P Code the suit should be regarded as filed when

The discretion conferred on the Court by S 149, C P C. is normally expected to be exe

and not as used in the Limitation Act. A thing should be presumed to be done *bona fide*, if it is done honestly whether it is done negligently or not for the purposes of

C. P. CODE (1908), S 149.

——**S. 149 and O 7, R. 11**—*Discretion of Court—Plaint presented on last day of limitation with insufficient court fee—Return for payment of proper court-fee within time fixed—Re presentation within time fixed with request for further time—Order granting same—Payment of full court-fee and re presentation in time—Effect of—If barred by limitation.*

Under O. 7, R. 11, C. P. Code, the Court may admit a plaint though written on paper insufficiently stamped if the plaintiff on being required by the Court supplies the requisite stamp paper within the time allowed by the Court, the plaint is a valid plaint and must be the Court, the plaint is a valid plaint and must be ... fied on the date on which

presented on ... with only a one rupee stamp. On 4—10—1928, with only a one rupee stamp. On 5—10—1928, it was returned directing payment of the ... On 19—10—1928 ... her two weeks ... 20—10—1928 ... -1928 with the ... ded as having been presented on 4—10—1928 and ... 3—11—1928 and that reading O 7 R. 11 with S. 149, the suit was not barred by limita... *J.*) DURAIRANG... NAIDU ... 48 L ...

——**S. 149**—*Disc... memo stamped with ...*

——**S. 149**—Discretion under—Exercise of—Rejection of application for leave to sue as pauper—Time for payment of court fee. *See* C.P. CODE O 33, Rr. 5 AND 15 **19 Pat L T. 8**

——**S 149**—*Memorandum of appeal filed with insufficient court fee—Application under S. 149 rejected—Appeal if filed in time.*

Where a memorandum of appeal was filed within the time allowed by law, with insufficient Court fee, the valuation of the appeal was subsequently reduced and an ...

unstamped or insufficiently stam... appeal will not amount to a valid p... *chariar and Pandrang Row JJ* ... v. RAMAYYA. **177 I C** ... **47 L W 211=1938 M W N 71=A I.R. 1938 Mad 316=(1938) 1 M L J 514.**

——**S. 149 and O 33, R 2**—Pauper petition—Subsequent application to pay Court-fees—Effect of—Discretion of Court. *See* C. P. CODE. O 33, R 2 AND S. 149. **1938 Rang L.R. 629.**

C. P CODE (1908), S 151.

——**S 151.**

Abuse of process.
Appeal.
Applicability.
Ends of justice.
Execution
Inherent jurisdiction.
Inherent power.
Order under
Other remedy.
Powers of High Court.
Restitution.
Review.
Scope.
Stay of suit.

——**S 151**—*Abuse of process of Court—Court incorrectly fixing period of grace for payment of arrears of rent—Payment after date fixed but within proper time—Ejectment—Power of Court to redress wrong.*

Where a decree for ejectment wrongly fixed the period of grace for payment of the arrears and the tenant in ignorance of his remedy kept quiet and paid the arrears after the date but within the proper time allowable under the law, but the landlord nevertheless *applied under S. 61 of the Oudh Rent Act and obtained* an order of ejectment, such an order amounts to an abuse of the process of the Court and S. 151, C. P. Code, is the only section under which the tenant could get redress of the wrong done and the Court can ... order ... *J.M.*) ... 931= ...) 383. ... *final* ... *dismis-* ... ng of a final decree on ... d that certain payment ... has not been given ... e dismissed owing to ... restore such applica- ... order passed on an ... inherent jurisdiction ... *a, J.*) MUNNI SINGH v. COLLECTOR OF BENARES.

1938 A W R (H C.) 711=1938 A.L J 1055.

——**Ss 151 and 144**—*Appeal—Orders for restitution after setting aside order of confirmation of sale—Principle involved.*

Simply because an order is passed under the inherent powers it does not necessarily become appealable. If however the inherent powers are used to expand a remedy in order to do justice to cover a case not within the exact words of but within the purpose of a proce- ... ned instead of its being applied by ... Therefore an order for restitution ... aside an order of confirmation of ... proceedings is in fact not an order under S. 144 but an order under S 151, and by analogy is appealable (*Stone, C.J and Digby, J.*) MT. CHAMPABAI v. DAULATRAM SHARMA.

A I R 1938 Nag. 326.

——**S. 151**—Appeal — Restitution—Order for — Appealability—Remedy—Revision. *See* C. P. CODE, Ss. 144 AND 151. **19 Pat L T. 111.**

C. P. CODE (1908), S 151.

——S 151—Appeal—Restitution—Order under S. 144 read with S. 151—Appealability—Revision *See* C. P. CODE, SS 144 AND 151. **19 Pat L T. 118.**

——S 151—*Applicability — Inherent powers—When to be exercised.*

It is a well recognised principle that where a party has another remedy, and will not adopt or negligently

v. RAMCHARAN PRASAD SAHU. **178 I C 41= 5 R.R 49=11 R.P. 204=1938 P W N 313= 19 Pat L T 111=A I R 1938 Pat 447**

O. 7, R. 10 is not restricted only to those cases in which the Court, for want of territorial jurisdiction returns the plaint. A plaint returned on the ground of

objection accepted in lower Court—Interference.

Where in a suit a party objects that a pleader engaged by the opposite party should not be allowed to appear as he had been previously engaged by him in connexion with the same litigation, and the lower Court after hearing both the parties, accepts the objection, an application by the pleader to set aside an order does not lie either under S 151 or S 115, C P Code or under S 85, Government of Burma Act (*Baguley and Mosely, JJ*) MAUNG THA TUN v BRAJAHORI WADDADER **177 I C 511=11 R R 137= A I.R 1938 Rang 241**

——S 151—Execution—Injunction to stay execution sale—Grant of—Inherent powers. *See* C P CODE O. 39, R 1 **16 Pat. 738.**

——S. 151—*Execution—Stopping of sale—Inherent powers.*

Under S. 151, C. P Code, the Court has full power to correct *suo motu* defects which it discovers in its proceedings It cannot be said tha proceed with the sale of proper brought to its notice that by rea attachment, misdescription in the defect any sale held is bound to Court is entitled to pause and r concerned should correct an obvi *I.C S*) KISHEN LAL v. MAN MA **1938 A M L.J. 97**

——S. 151—*Execution sale—Setting aside—Power of Court—Sale in execution of mortgage decree without*

Court for payment to the decree holder would any, but the decree ho did not implead the execution proceedings amount for him, th himself in an honest m set aside (*Addison and Din Mohammad, JJ*) JASPAT RAI v. KAHAN CHAND. **40 P L R 128= A.I.R. 1938 Lah. 232.**

C. P. CODE (1908), S. 151.

——Ss 151 and 152—*Inherent jurisdiction—Exercise of—Another remedy open—Amendment of decree—Powers of—Decree of Subordinate Court merged in appellate decree.*

A resort to inherent jurisdiction is not permissible where another remedy is open to the person preferring an application under S. 151. Thus where a remedy by

considerable delay in appealing is no bar to the District Judge entertaining an application to amend the decree of

this cannot be asked to be done as of right. The matter is one of discretion with the Court and the discretion has to be exercised after duly considering all the circum- *de, J.*) MITTER SEN-GANESHI LAL v **A.I.R 1938 Lah 4.**

—*Inherent powers—Extent of—Power to older purchaser for loss of as the result of another*

be interpreted as giving the general law they do not possess. A Court has no power under the section to give compensation to a decree-holder, who after purchasing property in execution in satisfaction of his decree loses part of that property as the result of another suit. (*Wort and Varma, JJ*) PHULCHAND RAM MARWARI v. NAURANGI LAL MARWARI **16 Pat 729=10 R P 320= 172 I C 225=1937 P W N 836= 18 Pat L T 826=A I R 1937 Pat 647.**

——S 151—*Inherent powers—Payment of money in Court to party entitled—Money realised by execution sale of attached property—Application for payment by Crown towards arrears of income tax due by judgment-debtor—Powers and duty of Court to order payment—Separate suit by Crown—Necessity—Attaching creditor—If secured creditor—Income tax Act, S. 46—If a bar to application for payment—Crown debt—Priority.*

The Crown has priority over unsecured creditors in the

account of income tax assessed on and due by the judgment debtor. It is not necessary for the Crown to file a suit for the amount due, when the debt is not disputed and is indisputable The right to payment being in- ustice requires that it should be paid to the formal application for payment has been right and convenience demand that the exercise its inherent power No special

not exhaustive and it cannot, without express words to that effect, take away from the Crown the right of enforcing payment by any other method open to it.

C. P. CODE (1908), S. 151.

Mockett, J.—The Court under such circumstances can rightly invoke its power under S. 151, C P. Code, in

A.I R. 1938 Mad 360=(1938) 1 M.L J. 351 (F B).

——S 151—*Inherent power—Power to go behind order of predecessor.*

Where a presidin
order, his successor
that order and hold
ul-Hasan and Hamilton, JJ.) SRI KRISHEN *v* JAMNA NARAIN 173 I C 980=1938 O W N 348= 10 R O 248=1938 O L R 154=1938 O A 240= 1938 O W N. 348=A.I R 1938 (

——S 151—*Inherent powers—Power t wrong or illegal order—If limited to cases deception practised on Court*

A Court has always got an inherent pc set aside an order made by it when it notice that the order is one which is nu should never have been made Its pow or vacate such an order is not limited to cases of fraud or deception practised upon the Court. (*Davis, J C. and Lobo, J*) DHOLANDAS GIDUMAL *v* SADHUMAL DOLUMAL. 32 S L R 215

——S 151—*Inherent powers—Recalling of invalid orders*

A Court has inherent jurisdiction its invalid orders. (*Iqbal Ahmad* CHAMPA DEVI *v* ASA DEVI I L R 172 I C 956=10 R A. 441=1937 R D 577= 1938 A.L R 53=1937 A W R 933= 1937 A L J. 945=A I R. 1938 All 8

——S. 151—*Inherent power—Recalling of orders passed by Court—Order passed within jurisdiction and not illegal—Facts rendering order invalid or irregular not brought to notice of Court—Effect—Power to*

Court confirmed the sale without probably noticing S. 26-M of the Act. On 24th September, 1936, the

respondent.

C. P. CODE (1908), S. 151.

Held, in revision, (1) that the order setting the sale passed on 23rd April, 1937, was one which it had jurisdiction to pass though the Court may have taken an view of the law, or not followed the correct in having proceeded *ex parte*; (2) that the ing within jurisdiction, the Court could not , and the remedy of the respondent, if aggrieved, was by way of appeal or revision and not by applying under S. 151, C. P. Code; (3) that there having been no 935, the Court was O. 21, R. 92, C. P. was perfectly legal the enactment of S. 26-M of the Bihar Tenancy Amendment Act, which was not brought to the notice of the Court, (4) that the non-compliance with S. 174, *i e.*, non deposit of fees at

Court—Other remedy open—If bar to restitution under inherent powers—Property wrongly taken away in execution against another under erroneous order—Duty to make restitution on establishment of title.

Where property has been taken away from a third ie or is so taken, the Court must use its inherent powers to restitute to such innocent party his property of which he has been deprived by the erroneous order of the Court. The fact that a suit is maintainable at the instance of that party is no ground for refusing redress under S. 151 when the wrong has been done under the order of the Court. (*Khaja Mohammad Noor, J.*) RAMESHWAR LAL JHUNJHUNWALA *v* MST. SUBDI. 19 Pat.L.T. 119=A I R 1938 Pat. 468.

——S 151—Inherent powers—Restitution—Powers Court—Execution sale—Property subsequently held be third person's in separate suit—Restitution to irchaser of purchase money *See* C P CODE, SS. 144 ND 151. 19 Pat L T. 111.

——S 151—Inherent powers—Restoration of case smissed for default—Grounds. *See* C. P. CODE, O. 9, 9. 40 Bom L R 238.

——S 151—*Inherent powers—Security for costs—vision application to High Court—Security for costs—Order for—Power to make—Civil Procedure Code, O 25 R. 1 and O. 41, R 10.*

by a party, or of which advantage has not been taken by

a party, the Court would certainly hesitate before exercising its inherent jurisdiction under S. 151. (*Rangnekar, J.*) HIRALAL RAMSUKH *v*. [illegible]
I L R. (1938) Bom. 743

——S 151—*Order under—passed on appeal—Revision.*

As there is no specific provisic[illegible] Procedure for an appeal agains[illegible] S. 151, no appeal lies from such the order of an appellate Cour[illegible] such order is passed without ju[illegible] such an order has been passed without jurisdiction a [illegible]

[illegible]

When there are specific provisions in the Code for the remedy which a party seeks, it is not open to him, after his failure to adopt those remedies, within the period allowed by law, to appeal to the inherent powers of the Court to obtain that remedy. Hence where a party has [illegible] is not [illegible] rt to [illegible] ARU

A.I R. 1938 Rang. 433

——S. 151—*Other remedy open—Execution struck off in full satisfaction—Aggrieved party not appealing—If can later on apply under S.* 151

Where certain orders were passed on an execution application and it was finally struck off in full satisfaction, the orders passed were under S 47, C.P Code and hence appealable. If the party aggrieved by those [illegible]

1938 A W R. (H C.) 733=1938 A L J 1041.

——S. 151—*Powers of High Court under—Stay of connected suits.*

[illegible]

——S 151—*Powers under—Orders in contravention of S 7 (1) (a) of U. P Encumbered Estates Act—If can be set aside.*

Where a delivery of possession has been made in contravention of S 7 (1) (*a*) of the U P. Encumbered Estates Act, though an application for restitution may not come under S 144, yet it can be set aside [illegible] S 151, C P. Code (*Zia-ul Hasan and Yorke,* [illegible]

A I R 1938 Oudh 221

——S 151—*Restitution—Order holding surety liable for payment—Reversal—Application by surety for restitution—Inherent power of Court*

A surety who is a party to an order holding him liable for payment to the decree holder can, on reversal of that orc[illegible] the [illegible] C. [illegible] TE [illegible]

——S. 151—*Review—Order due to inadvertence—Power of Court.*

[illegible] the amount.

Held that the Court had an inherent power to [illegible]

—— S. 151—Scope—Administration suit—Decree—Power of Court to pass appropriate order. *See* C P. CODE, O. 20, R 13. 1938 M W.N. 1127.

——Ss. 151 and 152—*Scope and applicability.*

Ss. 151 and 152, C. P. Code, cannot apply to a case where there is no accidental slip or error or omission on the part of the Court or there is no accidental slip, error or omission or slip in the plaint which intended one thing and owing to an accidental slip stated another, but the parties were labouring under a mistake at the time of the decree and the mistake was embodied in the decree. (*Dalip Singh, J.*) ABDUL SATTAR *v.* FAZAL UL-RAHMAN. 40 P L R 100=
A I.R 1938 Lah 331

——Ss 151 and 154—*Scope—Power to vacate prior order made by Court—Interests of justice.*

It is perfectly competent to a Court to vacate its own prior order. [illegible] Ss. 151 and 154, C. P. [illegible] his being done. Where [illegible] ary in the interests of [illegible] made by it, it can do so, and such an order vacating a prior wrong order cannot be said to be improper or without jurisdiction (*Macklin and Sen, JJ*) HASAN *v* ISAP
40 Bom L R 1180.

[illegible] 51—Scope of—Powers under, when to be [illegible] *ee* U. P. ENCUMBERED ESTATES ACT, 1938 R D 365

—*Stay of suit—Court in United Provinces—If can issue stay order to a Court in another province*

A Court in the United Provinces is not competent under S 151, C P Code, to issue a stay order to a Court in another province. (*Collister and Bajpai, JJ*) DARBAR PATIALA *v* NARAIN DAS GULAB SINGH I L R (1938) All 650=176 I C 625=11 R A 139= 1938 A L R 666=1938 R D 561=1938 A.L J 481= [illegible] I R 1938 All 434.

[illegible] cree — Subordinate decree *See* C. P [illegible]
A I.R 1938 Lah 4

——S 152—Applicability and scope—Correction of accidental slip in decree—Effect of—Review—Distinction—Order correcting mistake in decree but passed on review application—If falls under S 152 or O. 47—Original decree—If superseded *See* APPEAL—COMPETENCY 1938 M W.N 250

——Ss 152 and 115—*Decree substantially amended* [illegible] amendment is [illegible] lared due [illegible] al amou[illegible] h there

appeal. It cannot therefore be revised. But in the

——S. 152—*Scope of power under—Alteration of decree on the strength of accounts filed—If justified.*

Court had no jurisdiction to receive fresh documentary evidence The procedure is not justified by the powers of the Court under S. 152, C P. Code. (*Mulla, J.*) BALCHAND *v.* NARAIN DASS. 1938 A W R (H C) 773= 1938 A L J. 1080

——O. 1, R. 3—*Joinder of defendants—Suit for damages for breach of contract against one defendant and for damages in tort against another.*

A decree for damages for breach of contract against one defendant and a decree for damages in tort against another defendant in respect of damages arising out of the same transaction can be passed in the same action.

——O. 1, R 3—*Joinder of several defendants—Conditions—S*
—Different
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O. 2, R. 6—
O 1, R.
sion for wh
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defendants
be done, th
out of the same 'act or transacti
transactions'. In order to quali
case must be one in which the
fact or an issue of law or both
defendants is substantially the same. Where a plaintiff sued as an owner for possession of property, different defendants or sets of defendants who were in possession

does not apply to cases of misjoinder of causes of action but to cases where several causes of action have been properly joined in one suit and the causes of action so joined cannot conveniently be tried together. (*Braund, J.*) DAW HLA GYI *v* MAUNG PO THAUNG. 1938 Rang.L.R. 397=A.I.R. 1938 Rang. 420

——O. 1 Rr 3 and 5—*Misjoinder of defendants and causes of action—Every defendant if to be interested in all reliefs—Suit by son against father and alienees to declare debts not binding.*

Where the sons of a Hindu father sued him and his creditors and alienees for a declaration that the father's debts are immoral debts and hence not binding on them,

the suit is not bad for misjoinder of defendants and
of action, for the several alienations made
father constitute 'series of acts or transactions'
hey are the same series of acts or transactions
cause, as alleged by the plaintiffs, they were all vitiated by one circumstance, namely, that they were incurred for immoral purposes. This feature put all

PURUSHOTTAM *v.* BHAGWAN SAO. 1938 N.L.J 210=178 I C. 215= A.I R. 1938 Nag. 461.

——O. 1, R. 3—*Necessary party—Test for determination of.*

The allegations in the plaint alone should have been looked into in order to come to a finding whether a certain defendant is or is not a necessary party (*Abdur Rahman, J.*) DEVENDRA AYYAR *v* MUTHU CHETTIAR. 178 I.C. 191=47 L W. 760= 1938 M.W N. 75=A I R. 1938 Mad 329.

——O. 1 R 8—*Applicability—Suit against several*

quite clear that the procedure pertaining to representa-

granted a decree for a consolidated sum as representing the mesne profits.

Held, that though on the facts found the plaintiffs were entitled to have recourse to O 1 R. 8, C. P.
f interest as
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attempt had
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be payable
and Abdur
RINCE OF

1938 M.W N. 740=48 L W. 109= A.I R 1938 Mad. 755=(1938) 2 M L J. 148.

——O. 1, R. 10—*Scope of—Grounds for permitting amendment—Suit on behalf of a Government Ward—Plaintiff's name wrongly given—Amendment, if can be allowed—C.P. Court of Wards Act* (1889), *Ss.* 30 *and* 27.

O. 1, R 10, C. P. Code, on a plain reading only contemplates that a suit should have been filed in the name of a wrong person irrespective of whether he is a living or a dead person. Such a defect is capable of being cured, if the mistake is shown to have occurred in good faith and provided that in permitting the amendment no

C. P. CODE (1908), O. 1, R. 10.

injustice results to the defendant. In a suit on behalf of a government Ward under S. 30 of the C P Court of Wards Act, the real plaintiff is the manager and he sues on behalf of the Ward. Any mistake in the name of the Ward does not affect the substance of the suit and its correction cannot prejudice the defendant. (*Niyogi, J.*) KARIMULLAH KHAN *v.* BHANU PRATAP SINGH. 175 I C. 911=11 R N. 14= A I.R 1938 Nag. 458.

——**O 1, R. 10**—*Scope—Striking out name of necessary party—Propriety—Proper procedure.*

When O 1, R. 10, C P. Code, provides that the Court may strike out the name of a party who has been im

owners of the equity of redemption sue for redemption of the mortgage, the Court cannot strike out the names of some of them under O 1, R 10, C P. Code, on the ground that they had not been properly joined as parties to the suit The correct procedure would be to keep the names of all the plaintiffs on the record until a

——O. 1, R. 10 (2)—*Power of Court to act suo motu—Grounds for adding party*

Under O 1, R 10 (2) it is not necessary that there should be an application from the parties, the rule,

HIRA LAL ROY CHOWDHURY *v.* ANNAPURNA. 1938 A L J (Supp) 9=1938 A W.R (B R) 97= 1938 R D 188.

——**O 1, R. 10 (2) and S 107**—*Power of Court—Addition of party as respondent in the appeal*

The Court has ample powers under the provisions of O 1, R 10 (2) read with S 107 C P Code, to implead any person in the appeal as a respondent who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court to adjudicate upon all the questions involved in the appeal effectively. (*Abdur Rahman, J*) DEVENDRA AYYAR *v* MUTHU CHETTIAR 178 I C 191= 47 L W. 760=1938 M W N. 75= A I R. 1938 Mad 329

——**O 2, R 2**—Applicability—Contract of sale by instalments—Defaults—Separate suits in respect of each default—If barred *See* SALE OF GOODS ACT, S 39 (2) A I R 1938 Rang 364

——**O 2 R 2**—*Applicability—Sale deed—Covenant as to land being free from encumbrances—Undisclosed mortgage—Decree and sale—Suit on ground of dispossession by purchaser at sale—Dismissal as dispossession found to be false—Second suit on ground of plaintiff having been compelled to pay claim of prior mortgagee—If barred.*

Although a sale deed contains a single covenant to the effect that the land sold is free from encumbrances, there may be two distinct causes of action giving rise to different suits, arising out of the breach of the same

C. P. CODE (1908), O. 2, R. 2.

covenant. The dismissal of a suit by the vendee on the ground of dispossession by the purchaser at a sale in execution of a decree on an undisclosed prior mortgage —the dispossession being found to be false—is no bar under O 2, R. 2, C P. Code to a second suit on a separate cause of action, namely, that the vendee, at a time anterior to the date of the alleged dispossession, was compelled to pay off the claim under the undisclosed mortgage. (*Horwill, J.*) ARUMUGHAM CHETTIAR *v* MARIAPPAN CHETTIAR. 1937 M W.N. 1256= 176 I C. 809 =11 R M. 178 =A.I R 1938 Mad 255= (1938) 1 M.L.J. 184

——**O. 2, R 2**—Gift of certain property to wife in

session—*Decree—Subsequent suit for future mesne profits—If maintainable.*

Where a mortgagee who is entitled to sue both for mesne profits and possession sues only for mesne profits and does not sue for possession and obtains a decree, he cannot subsequently sue for possession. And when his

——**O 2, R. 2**—*Omission of claim—Absence of leave—Effect.*

Where a person failed to include in his suit the whole

suit for those reliefs is barred by the provisions of O. 2, R. 2, C. P Code (*Mosely, J.*) A. S CHETTYAR FIRM *v.* P. R S MEERA PILLAI 178 I C. 157= A.I R 1938 Rang 290.

——**O 2, R 2 and O. 23, R 1**—*Scope—Suit on mortgage—Agreement between plaintiff and sub mortgagee to omit properties sub mortgaged from suit and to file fresh suit in that behalf within time fixed—Court omitting properties and fixing time—No express application or order under O 23—Effect—Fresh suit in time if barred.*

In a suit in the Bombay High Court for sale on a mortgage, the plaintiff and his sub-mortgagee who was impleaded as a party to the suit, agreed to omit from that suit their claim to certain lands in the suit, which were in Madras and to bring a suit for the same within three months in Madras An *interim* decree was passed by consent as between these two parties The period was extended later by another fifteen days and it was ordered that if such a suit was not filed within the said fifteen days the parties should be barred from filing such a suit. There was however, no express written application to withdraw the claim, nor any express order allowing withdrawal or granting permission to file a fresh suit A fresh suit was filed by the sub-mortgagee within the time fixed in Madras in the proper Court It was contended that the suit was barred under O. 2, R. 2 and O 23, R 1.

Held, that the suit was not barred either under O 2, R. 2 or O. 23, R. 1, C. P. Code and it must be held that

C. P. CODE (1908), O. 2, R. 2.

the Bombay Court acted under O. 23, C. P. Code, and gave permission to the institution of a fresh suit and that the order was duly complied with. (*Madhavan*

cluded in claim—Distraint proceedings for Kharif *proving infructuous—Subsequent suit for* Kharif *rent —If barred.*

A landholder sued his tenant under S. 132 of the Agra Tenancy Act for the recovery of *rabi* rent of a certain *fasli*, but did not sue for the *Kharif* rent of that *fasli*, though that was also due; as the landholder

nt by distraint,
he plaint. The
and the plain-
the *Kharif* rent
of that *fasli*.

Held, that the suit was barred by O. 2, R 2, C P. Code (*Darling, S.M and Bomford, J M*) KISHAN LAL *v.* SHRI RAM. 1937 A W R. 867= 1937 R D 394

——O. 2, R 2—*Specific performance of contract of sale—Suit for—Separate suit for possession — If barred.*

In a suit for specific performance of a contract of sale the cause of action that first arises is one for performance of that contract by execution of a registered deed

ance has been passed and is then a new and distinct cause of action

A. S. CHETTY

——O. 2, R

for—Grant of

Under O 2,
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by the Court during the pendency of the suit as before its institution. The legislature did not wish to insist upon leave being obtained before the first hearing. (*Varadachariar, J.*) VENKAYYA *v.* VENKATA RAO. 1938 M.W N. 925=48 L W. 517= A I.R 1938 Mad 979=(1938) 2 M L J. 642

——O 2, R 2 (3)—*Splitting of claim—Right of plaintiff.*

Per *Baguley, J.*—There is no provision of law by which a plaintiff can reserve the right to split his claim arising out of the same cause of action. He may ask the Court to allow him to do so under O 2, R. 2 (3) C. P. Code, but the Code gives no unilateral right to

C. P. CODE (1908), O. 5, R. 20.

reserve a claim of this sort. (*Baguley and Sharpe, JJ.*) MA MA NYUN *v.* MAUNG MYA. 1937 Rang. L.R. 447=174 I.C. 794=10 R R 428= A I.R. 1938 Rang 76

licability—Misjoinder of causes
DE, O. 1, R 3—JOINDER OF
1938 Rang L R. 397.

4—*Pleader not appointed in application for restoration of suit.*

A pleader who puts in an application on behalf of a litigant acts for him and cannot, therefore, do so unless he is authorized in writing by him. Consequently an application for restoration of a suit dismissed for default cannot be made by a pleader whose appointment has not been made in writing. (*Addison and Din Mohomed, JJ.*) BASHER AHMAD *v* MARY NINCK. I.L R. (1938) Lah. 417=40 P L R 235= A.I R. 1938 Lah 698.

——O 3, R 4—*Vakalat filed in suit—How long remains in force—Collector's cases—Fresh vakalat—Necessity.*

Collector's cases are regulated by rules framed under S. 70, C P. Code. Being part of execution proceedings they are part of proceedings in suit. As a vakalatnama filed by a pleader in the suit remains in force throughout the proceedings in the suit and as a fresh vakalatnama is not necessary for his appearance in execution proceedings, so also in Collector's cases which are only part of those proceedings in the suit, a fresh vakalatnama is not necessary for the pleader's appearance (*G P. Burton,*) THE CO OPERATIVE SOCIETY *v.* RAMDRA BHAGWATT 1938 N.L J. 122.

O 3, R 4 (3) and O. 9, R. 9—*Interpretation of* (3) *of R 4 of O. 3—Application for restoration of suit dismissed for default—Fresh appointment of*

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——O. 5, R. 17—*Summons—Service by affixture when justified—Reasonable diligence to find out party— to return—Affixture*

opy of the summons to
house, can come into

the defendant had gone out on business and would be back in the evening and he thereupon affixed the summons to the door of the house, it cannot be said that the summons has been duly served, for it could not be said that reasonable diligence had been used to find out the defendant. (*Mulla, J*) SALIG RAM *v* JUMNA SAHAI. 1938 A W R (H C.) 750= 1938 A L J 1166.

——O. 5, R 20—*Substituted service—When could be ordered—Conditional order to serving officer—Legality.*

Where in an order for fresh summons a Court remarked that if the defendant evaded service or could not be found after due care and diligence substituted service

C. P. CODE (1908), O. 6, R. 4.

would be effected, it was held that such a conditional order was illegal, as it was for the Court and not for the serving officer to determine whether there was evasion of service. O. 5, R 20 allows substituted service only when the Court is satisfied that defendant is evading service. (*Weston, I.C.S.*) GOVIND RAM *v.* NIRANJAN LAL **1938 A M L J. 43**

——O. 6, R 4—*Pleadings—Deed impea* [illegible] *'fraudulent' and 'bogus'—Necessity to keep distinct.*

To call a deed both 'fraudulent' and 'bogus' i[illegible] clear piece of pleading Though fraud may be in both cases, a deed may be fraudulent withou[illegible] bogus and hence it is better to keep the two [illegible] (*Gruer and Niyogi JJ.*) GODBOLE *v.* MST. NANIBAI **1938 N.L J. 279 = A I R. 1938 Nag 546.**

——O 6, R 10—*Plea of insanity—Pleadings—Contents—Duty of final Court of fact.*

Though it may be that a party seeking [illegible] effect of a deed by pleading insanity at th[illegible] cution of the deed is not bound to plead [illegible] from which he was bound to establish [illegible] though it is permissible for him to lead evidence in proof of general insanity from which an inference of unfit mental condition at the time of the deed could be drawn [illegible] for the final appellate Co[illegible] insanity from the statemen[illegible] the pleading. (*Puranik, J*) FATMABI [illegible] **A.I.R. 1938 Nag 204**

——O 6 R 17—*Amendment—If in the complete discretion of Court—When obligatory—Pronote forming part of the cause of action found* [illegible] *Amendment to permit falling back upo*[illegible] *debt—If can be allowed.*

Though, O. 6, R 17, C. P Code, [illegible] words 'the Court may', the latter portion [illegible] if the amendment is permissible under the law otherwise the Judge has no discretion but to allow it, if it is necessary for determining the real question in controversy between the parties Where a suit was for monies due on a mortgage as evidenced by a pronote and a deposit of title deeds, but the pronote was found to be inadmissible in evidence, the plaintiff could be permitted to amend his plaint, so as to base his cause of action on the original debt for which the defective pronote was given. There could be no prejudice to the other party such as could not be compensated by costs, and the suit, would still remain after the amendment, a suit to recover money on a mortgage created by deposit of title deeds. (*Baguley and Mosely, JJ*) NIEMEYER *v.* E M. MAMOOJI **1938 Rang L R. 521 = A.I R 1938 Rang. 461**

——O. 6, R. 17—*Amendment of plaint—Considerations—Legal relationship and nature of suit—Alteration of—If permissible*

An amendment of the plaint should not be allowed when plaintiff seeks to amend in order to sue on an entirely different legal relationship between himself and the defendant from that relied upon in the original plaint, and when the entire nature of the suit is sought to be changed. (*Weston*) NIHAL CHAND *v.* AMAR CHAND. **1937 A M L J. 104**

——O. 6, R 17—*Amendment of plaint—Introduction of fresh details—Permissibility.*

C P. CODE (1908), O. 6, R. 17.

It is not by a mere change in the wording of the plaint or the introduction of fresh details that the nature of a suit is altered The alteration which affects the case is one where the original suit is wholly displaced by the proposed amendment or where a totally different or inconsistent case is introduced. But where this is not the case, leave to amend cannot be refused merely on [illegible]

[illegible] *tion of opposite party.*

A firm brought a suit against another firm working in the Patiala State. The description of the opposite party was given as "firm *S* situate at Patiala State [illegible] name of *C*, the sole proprietor and manager of the firm in place of firm *S*

Held that in view of the fact that the name of *C* was [illegible]

A I R 1938 Lab. 718.

[illegible] nt of plaint—Revision. [illegible] DECIDED' **1937 A M L J. 104**

——O 6, R 17—*Amendment of plaint—When to be disallowed—New case—Late stage.*

It is wrong for a Court considering amendment to re[illegible] refused as being not only out of time, but made at a very late stage. It is an amendment that introduces a new case, a new cause of action, a new contract, a contract made at a different time having [illegible]

A.I R. 1938 Nag 388.

——O 6 R. 17—Amendment in second appeal—Permissibility—Suit for bare declaration—Plea of non-maintainability raised in trial Court—Application for amendment in second appeal—Competency *See* SPECIFIC RELIEF ACT, S. 42.
1938 M W N 274 = A I R 1938 Mad 331.

——O 6, R 17—*Appeal—Decree against two defendants—Appeal by one only—Appeal in form against whole decree—Court paid only as regards part—Application to amend valuation and to pay additional court-fee—Duty of Court.*

Where an appeal by one defendant only from a decree against two is objected to on the ground that the valuation of the appeal is restricted to that part only which relates to the appellant, if the appellant offers to amend the valuation and pay the difference of court fee, the same must be accepted by the Court especially when the appeal in form is against the whole decree. (

C. P. CODE (1908), O. 6, R. 17.

Terrell, C.J. and James, J.) SARAT CHANDRA PATNAIK *v.* BAIDYANATH. 1938 P W.N. 523

——**O. 6, R. 17**—*Applicability—Party deliberately omitting to join necessary party to application and concealing existence—Subsequent application to amend—If can be allowed.*

Where an applicant under S. 4 of the U. P. Encumbered Estates Act does not join in his application all the necessary parties as required by law, and asserts that there are no other parties to be added, wilfully ... his ... the ... enefit of O. 6, R. 17 cannot be given to such a party. (*Darling, S. M and Bomford, J.M*) HAR PRASAD *v.* PARMESHWARI DAS. 1938 R D 137= 1938 A W R 44 (B R)

——... *for rec... mortga... bility*

Where a person brings a suit for recovery of possession of land but it is found that in fact his claim is for redemption of an usufructuary mortgage, such person cannot be allowed an amendment of the pleadings by basing his suit on his title, the causes of action for the two suits being different. (*Baguley, J.*) U NAING *v.* KO SEIN. 176 I C. 631=11 R R. 64= A I R. 1938 Rang 125

——**O 6, R 17**—*Discretion—Amendment, at late stage to avoid payment of court fee—If can be allowed.*

No party has an absolute right to abandon any portion of his claim at any stage. It is always in the discretion of the Court whether to allow an amendment of the plaint or memorandum of appeal or refuse it. Where a party has obtained an adjudication of his claim ...

... *and Zia-ul-* AHMAD.

——**O. 6,** ...

... *allowed* ...

mortgage suit the mortgagor makes no claim to money decree, allows time to go by and makes no application for leave to amend till his claim is barred by limitation, but subsequently applies for leave to amend, although there is still a discretion in the Court to allow amend-...

——**O. 6, R. 17**—*Discretion of trial Court—Interference.*

The trial Court has complete discretion whether to allow or refuse a prayer for an amendment of pleadings and where the discretion has not been exercised injudiciously or arbitrarily, the High Court will not interfere (*Addison and Din Mahomed, JJ.*) JAINI BROTHERS & CO. *v.* SHANKAR LAL 178 I C 176= A I R. 1938 Lah 270.

——**O. 6, R. 17**—*Late stage—Delay in application*— ...

... ship which ... date of suit ... ts, and the plaintiff applied to amend the plaint after considerable delay, so as to enable him to obtain an alternative relief for partition of the assets in case there was no dissolution of the partnership.

Held, that in the matter of rectifying defects in pleadings which do not affect any substantial rights, it is not consonant with justice to deny a remedy which otherwise would be lost by reason of carelessness or delay.

Held, further, that in the circumstances of the case the lower Court ought to have allowed the amendment of the plaint. (*Pandrang Row and Venkataramana Rao, JJ*) ...

——**O 6, R. 17**—*Powers of Court—Amendment of plaint in appeal—Propriety.*

An amendment of the plaint may be allowed even at the appellate stage. It is for the Court to consider ... under the ... conclu- ... the sub- ... form, the ... llows the ...

... Court was in accordance with the true facts that ... defendant 2 ... wed. ... AMA-SUBRAMANIAN CHETTIAR. A I R. 1938 Mad. 265.

——**O 6, R 17**—*Scope—If exhaustive—Application for leave to sue in forma pauperis—Property omitted*

from schedule—Amendment to include—Power of Court to allow.

O. 6, R. 17, C. P. Code, is not exhaustive of the powers of the Court in the matter of amendments ... Court has therefore jur... of an application for lea... including an item of ... omitted from the application or annexure thereto. Such an amendment cannot be held to be illegal or without jurisdiction on the ground that O 6, C. P. Code, applies only to pleadings and not to applications to sue *in forma pauperis*. (*Dhavle and Varma, JJ.*) BIHARI SAHU *v.* SUDAMA KUER. 175 I.C 505=10 R P 632=1938 P W N. 163=4 B R 598=19 Pat L T. 101=A I R. 1938 Pat 209

——O. 6, R. 17—*Scope—Suit under O. 21, R. 103, C. P. Code, for ... of plaint by def... ment of additio... re-amend plain... for possession—...*

Plaintiff brou... Code ...

ed in appeal. In second appeal by the defendant, the pl... pl... pu... an... no...

Contract found to be void—Refund of purchase money—Amendment of plaint—Permissibility.

A ... brought a contract of sale of land which ...

amend his plaint in order to obtain the refund of the purchase money and should not be referred to a separate suit. (*Dalip Singh and Skemp, JJ.*) HAKAM ALI *v.* HASHU. A I R. 1938 Lah 244.

——O 7, R. 1—*Particulars in plaint—Suit for breach of conditions in contract—Particulars as to the conditions and manner in which they had been violated—Necessity to give.*

A defendant is entitled to know exactly what case he has to meet and he must have an opportunity to investigate the details of the claim, with a view to prepare the materials for his defence Where the breach of certain conditions of an agreement forms the subject matter of the plaintiff's complaint, the defendant is entitled to know, the conditions and the exact manner in which they have been violated. (*Bose, J.*) JAMSHED *v.* KUNJILAL. 1938 N L J 392=A I R. 1938 Nag. 530

——O 7, R 10—Applicability—If ... of return of plaint for want of territo... *See* C. P. CODE, Ss 151 AND O. 7. R ... A I R ...

——O. 7 R. 10—*Time for return of plaint—Order returning plaint at stage of arguments—Propriety.*

A Court can return a plaint for presentation to the proper Court ...

A I R 1938 All 76.

——O. 7, R. 11—*Duty of Court—Appeal—Deficiency in court fee—Proper procedure—Dismissal without proper order directing appellant to pay deficient court fee*

If an appeal presented in time is insufficiently stamped ... in stamps or for remedying the defect. If he fails to ... h that order, the appeal is dismissed for such ... omply with the order of the Court. There is ... of limitation in such a case The best course for the Court is to wait till the expiry of the period fixed ...

...ne—Request for further time ... such time—Sufficiency—Suit ... ted—Date of original presentation of full court fee. *See* C P. ... R. 11. 1938 M W N. 257

——O 7, R 11 (c) ...

... *Pand*... 71=... 316=... 514.

——O 7, R 11 (*c*)—*Dismissal under—When justified—Appeal insufficiently not stamped and presented in time—Duty of Court—Dismissal without order requiring payment of deficiency within fixed period—Legality.*

Before a suit or an appeal can be rejected for insufficiency in court-fee under O. 7, R. 11 (*c*), C P. Code, the law requires that there shall be a definite order of the Court, fixing a day for payment of the deficiency and non compliance with such order The dismissal of the suit or appeal for non-payment of the necessary court-fee before the expiry of the period of limitation is not warranted. If the suit or appeal is filed in time, it is open to the Court to give time to the party for paying the necessary court-fee even in instalments. The fact that the counsel for the plaintiff or appellant promises to pay the deficiency within a period does not take the place of the order of the Court which is prescribed by law. ... Code, should be ... for contempt of ... rders of the Court ... (*Darling, S.M.*)

C. P. CODE (1908), O. 7, R. 11.

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for making good deficiency—Necessity.

Under O. 7 R. 11 C. P. Code, when a plaint is pre

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application is required to be made under

(*Weston, J C S.*) MAHADEO *v.* RAM PRAT

1938 A.

——**O. 7, R 11 (c)**—*Scope and effect of—sufficiently stamped—Duty of Court—Rejection of plaint—Order of—When to be made.*

Where a plaint is insufficiently stamped, the Court is bound under O. 7, R. 11, C P. Code, to give the plaintiff time to make up the deficit, only when he fails to

it to give effect to the provision of law. (*Venkatasubba Rao, J*) VENKANNA *v* ATCHUTARAMANNA.

1938 M.W N 259=47 L W. 492= A I R 1938 Mad 542=(1938)

——**O 7, R. 14 (2)**—List filed under

spect—Limits *See* C. P CODE, O. 11

18. **A I R. 1**

——**O. 8, Rr 3 and 5**—*Plaint all*

terms of lease—Absence of specific

inadmissible in evidence—Effect

bility—Remedy of mortgagor.

A claim by the mortgagor, in the mortgagee's suit on the mortgage, to have some sort of abatement of the consideration of the mortgage—the mortgagee not seeking to set aside the contract of mortgage—is in the

——**O. 9, R. 3**—*Proceedings for final decree pending—Dismissal of suit for default—Propriety.*

Where a preliminary decree for partition has been passed and the Court takes proceedings for passing the final de

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11 R Pesh. 3=A I R. 1938 Pesh. 27.

——**O. 9, Rr. 3 and 4**—*Applicability—Plaintiff's pleader stating that his client would not proceed with*

C. P. CODE (1908), O. 9, R. 8.

the

Court and made a statement to the effect that his client's agent had informed him that he would not proceed with

——**O. 9, Rr 3 and 8**—*Dismissal—When justified—Date fixed for filing list of witnesses—Failure to appear on that date—Effect—'Hearing'—Meaning.*

The utmost result of the failure of a party to give a list of witnesses within the time fixed would be that the

to appear when the suit is called on for hearing, and clearly a date fixed solely as the last day on which a list of witnesses may be filed is not a date fixed for hearing.

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177 I C 401=11 R C. 242= 42 C W.N. 806=A.I R. 1938 Cal. 547.

——**O 9, R 5**—*Order for issue of fresh notice to* pro forma *defendant—Plaintiff not complying with order—Dismissal of suit even as against contesting —Propriety.*

ion of an Assistant Collector in dismissing a profits under S 227 of Agra Tenancy Act oth defendants merely because the plaintiff omply with the Court's order for the issue of a ce for the appearance of the *pro forma* defendant high-handed in character. Under Cl. (1) of O. 9, C. P. Code, the Court is at liberty to "make an order that the suit be dismissed as against such defendant", namely, the *pro forma* defendant. The Assistant Collector is not justified in dismissing the suit against the contesting defendant who is duly represented his order is, therefore, (*Darling S M and*

AL *v.* MADAN GOPAL.

1937 R D. 384.

——**O. 9, R. 8**—Applicability—Dismissal for default in deposit and appearance on day fixed *See* C. P. CODE, O. 9, R. 9 (1). **1938 R.D. 614.**

C. P. CODE (1908), O. 9, R. 8.

——O. 9, R. 8—*Applicability — Plaintiff's counsel asking for adjournment—Adjournment being refused, reporting no further instructions.*

Where the plaintiff's Counsel confines himself to asking for an adjournment and, when it is refused, retires from the case and states that he has no further instructions, R. 8 of O. 9 applies and the plaintiff will

case so as not to prejudice his client by appearing or

Review application—Competency.

Where a suit is dismissed for default, the remedy of R. 9.

——O 9, R 9—*Application u proved*

In an application for restoration under O. 9, R. 9 the plaintiff must show some fact which was either not known to the Court when it dismissed the suit, or at least at that stage lacked satisfactory proof (*Panckridge, J*) BAIJNATH BOTHRA *v.* KEDARNATH I L R. (1938) 1 Cal 213=174 I C 657= 10 R C 703=A I R. 1938 Cal 74

——O 9, R 9—Application under—Pleader on recor

C P

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for

Duty

Slight negligence of party—If ground for refusing to restore—Discretion exercised on wrong basis—Interference on appeal—Inherent powers of Court, S 151

Per *Beaumont, C J* and *Rangnekar, J*—In cases of discretion it is very undesirable to act on precedents, as every Judge has to deal with the cases which come up before him on the particular facts of each cases If a person whose case has been dismissed for non-appearance summarily, appears on the same day, and produces

generally to be given the right to have his case restored on payment of costs thrown away It is, after all, a very serious matter to dismiss a man's suit or summons or whatever it may be without hearing it, and that course ought not to be adopted unless the Court is really satisfied that justice so requires There is nearly always some degree of negligence or carelessness on the part of an applicant whose case has been dismissed for non-appearance, but that by itself would not disentitle him to have his case restored to the file Where the negligence is exceedingly slight, the case ought to be restored, if he is not guilty of either conduct or gross negligence. If the Court exercises its discretion on a

C. P. CODE (1908), O. 9, R. 13.

wrong basis, the appellate Court will interfere and make the necessary orders

Blackwell, J.—Whether the matter is to be dealt with as falling under O. 9, R. 9 or under S 151, C P. Code, and the inherent jurisdiction of the Court, it is in every case a matter for the discretion of Court. If the Court dealing with the matter cannot be said to have ... capriciously or in disregard of any legal ... cise of its discretion, the appellate ... interfere, though it may come to a ... on if it were to deal with the same matter.

... does not restore a... able cause is shown ... ppearance and it is ... 151, has ... to act *ex debito justitiae* in order that real and substantial justice may be done. Rules of procedure are meant to secure

——O. 9, R. 9 (1)—*Dismissal of suit for default—Plaintiff, if precluded from setting up his claim as defence to suit.*

In a suit on a first mortgage, the third mortgagee who was impleaded as one of the defendants claimed priority over the second mortgagor under S 78 of the T. P. Act A suit previously filed by the third mortgagee to obtain a declaration of his priority was dismissed for default.

42 C W N ...

——O. 9, Rr. 9 (1) and 8—*Fresh suit—Bar of—Default in deposit and appearance on day fixed—Dismissal—Fresh suit with addition of new defendant—Maintainability*

Where in a suit for ejectment the plaintiff was granted time to add a new defendant on condition that a sum was deposited on a certain date as damages, and where on his default in so depositing and failing to appear on ... ejectment ... n of a new ... 9 (1), C P. ... one under ... HNA JATAR ... R D 614= ... (B.B) 322.

—— O 9, R 13—*Applicability*—"Ex parte *decree*"—*Defendant directed to file written statement but not filing—Effect—Defendant and pleader not prevented from addressing Court at hearing—Decree—If* ex parte *—Application to set aside—Maintainability.*

Where a defendant is directed to file a written statement by a certain date but fails to do so, and his application for further time is rejected, the Court should direct the case to be heard in default of written statement An order fixing the case for hearing *ex parte* is not justified. A defendant is not bound to put in a written statement; if he does not file it he is taken to admit the allegations in the plaint He is,

(Tek Chand, J.) GANI

——O 17, R. 3—*Ac ship accounts—Prelimin ing plaintiff to deposit commissioner's fees—Deposit not made—Dismissal of suit—Appeal—Appellate Court admitting appeal on condition of plaintiff making required deposit—Propriety of.*

In a suit for taking partnership accounts a preliminary decree was passed and a commissioner was appointed for settling partnership accounts The trial Court ordered the plaintiff to deposit a certain sum towards the commissioner's fees. The plaintiff did not make the deposit and obtained adjournment On the adjourned date, the plaintiff was warned that if the deposit was not made within a week the suit was liable to be dismissed for want of prosecution. No deposit having been made within the time allowed, the Court dismissed the suit. On appeal against this order the appellate Court admitted the appeal on condition that the plaintiff deposited the required sum.

Held, (1) that the order of the appellate Court in so far as it interfered with the discretion ... trial Court ... trial Court d ... Hence in dis ... plaintiff to d ... materials on ... provisions ... decree havin ... thereafter to be restored to file on the deposit being made, and proceeded with (*Mehta and Lobo, JJ*) MENGHOMAL *v.* VARUMAL. 176 I.C. 503=11 R S 20= A.I R. 1938 Sind 142

——O. 17, R. 3—Order of dismissal under—Remedy—Appeal or review. *See* C. P CODE, O. 47, R. 1. 1938 R.D 184=1938 A.W R. (B R.) 115.

——O 18, R 13—... *If mandatory*

It is not enough tha ... evidence in his judg ... should make a separa ... given by each witness ... *J.*) DASSA RAM *v.* Z ... 177 I C. 157=11 R. Pesh ... A I R 1938 P

——O. 18, R 18—*Local inspection—Object o ... cedure—Judge making inquiries of people pr... at inspection and basing decision thereon—Propriety of—Finding of fact—Finality in second appeal.*

It is a quite unobjectionable procedure for a Judge to make a local inspection, in fact O. 18, R. 18, C.P. Code, expressly provides for it But it is not a justifiable procedure for a Judge at such local inspection to welcome the presence of crowds of anonymous villagers and indulge in formal inquiries amongst the people in those crowds for the purpose of obtaining guidance in deciding the rights of the parties. If a Judge does so and treats ... n the case, ... warrant for the procedure whereby th... himself into an unofficial investigator and inquires of all and sundry regarding their views on the rights of the parties with the object of founding a judgment on what he has heard. No finding of fact based on such materials and achieved by such procedure can be supported or be

——O. 18, R. 18—*Observations of Judge made as result of local inspection—Value of.*

Observations by a Judge in the course of his local inspection cannot be substituted for the evidence of witnesses examined on the subject. It is obvious that in the case of a Judge's observations, the parties never get a chance of either cross examining him on the various points raised or setting right his views if they are found to be erroneous. (*Varma, J.*) HARI PRASAD SAHU *v.* ROPNA KHARIA. 175 I C. 698=4 B R 625= 11 R P. 9=A I.R. 1938 Pat. 288.

——O. 20—Scope of—Extension of principle underlying—Rules to be observed. *See* TORT—DAMAGES. 1938 A.L.J. 571.

——O 20, R. 1—*Judgment delivered without notice to parties—Counsel for party informed subsequently—Limitation for appeal—Starting point.*

Where a Court delivers a judgment without having ... the judgment, ... date, the judge ... ater day, this ... r pronouncing ... peal must be ... m the date on ... A I.R. 1925 ... MOHAMMAD

——O. 20, R. ... AND 149 AND O.

——O 20, R ... *Causes—Contents—Duty of Judge*

Under O. 20, R 4 (1), C. P. Code, the judgment of a Court of Small Causes must contain the point for deter...

1938 O W N. 805=A.I R 1938 Oudh 225.

——O 20, R. 4 (2)—Judgment—Contents. *See* C. P. CODE, O. 41, R. 31 AND O. 20, R. 4 (2) A I.R. 1938 Pat. 69

——O. 20, R 6—Scope and effect of. *See* C. P. CODE (1908), SS. 148 AND 149 AND O. 20, RR. 3 AND 6 1938 A L J. 673.

——O. 20, R. 11—*Power of Court under—If affected by U. P. Agriculturists' Relief Act.*

Under the Agriculturists' Relief Act it is imperative on the Court to pass an instalment decree in certain cir...

1937 A L J. 1247=A I R 1938 All. 52.

——O. 20, R. 11(2)—*Order under—Application time barred—Legality—Limitation—Matter of procedure.*

An order passed under O. 21, R. 11 (2) postponing the date of payment of the decretal amount on terms, on

C. P. CODE (1908), O 20, R. 12.

an application filed after six months of the date of the decree, is not an order passed without jurisdiction Limitation is a matter of procedure and an order passed on a time barred application is not one without jurisdiction. (*Weston.*) SOHAN RAJ v. KESHA.

1938 A M L J. 86

made in *execution* as to the amount of mesne profits from the institution of the suit till delivery of

then be the duty of that Court to pass a final decree in conformity with the provisions of O. 20, R 12 (2), C. P. Code.

Per *Derbyshire, C.J · Mukherjea, J.* (*contra*).—There is nothing improper or wrong in law in the suit Court directing that such an inquiry shall be made by the executing Court, and there is much

of it from the point of view of

shire, C J and Mukherjea, J)

THE PORT OF CALCUTTA v. PR(

67 C.L J. 473=42 C.W.N. 748.

——O 20, R 12—*Mesne profits—Calculation of—Deduction of collection charges.*

Even where the dispossession is wanton and malicious in calculating the amount of mesne profits the collection

68 C L J 152=A.I R 1938 Cal 563

——O. 20, R. 12—*Mesne profits—Int rest—Mode of calculation.*

When profits are earned or might by the wrongdoer yearly, interest on be calculated yearly and year by year. *Biswas, JJ*) RAJENDRA NARAYAN BENDRA NARAYAN RAY

(*R ... and Biswas, JJ*) RAJENDRA NARAYAN RAY v. BHAIRABENDRA NARAYAN RAY.

68 C L J 152=A I R 1938 Cal 563

——O 20 R 12—*Partition suit—Preliminary decree passed on compromise—No provision for mesne profits—Power of Court to direct enquiry into mesne profits*

It cannot be denied that a decree can be varied by consent of parties. Although the preliminary decree passed on a compromise in a partition suit makes no provision for payment or ascertainment of any mesne profits, the Court would be justified in appointing a

ul-Hasan and Ham lton, JJ) SRI KRISHEN v.

C. P. CODE (1908), O 20, R. 13.

JAMNA NARAIN.

173 I C 980=10 R O 248=1938 O.L R 154=1938 O A. 240=1938 O.W.N 348=A I R. 1938 Oudh 103

——O. 20, R. 12—*Preliminary decrees granting mesne profits before suit—Exact date from which they were to be assessed not specified—Right of plaintiff to*

tainment of mesne profits.

The correct procedure under O. 20 R. 12, C. P. Code, is for the Court to direct an inquiry as to the mesne profits, and then pass a final decree for the amount found due on inquiry The Court which is directed to make the inquiry in execution ought merely to determine

its recovery It

decree for recovery

C. J.) BALARAM

176 I C. 254=11 R B 33=40 Bom L R 416=A I R 1938 Bom. 320.

——O 20, R 12—Scope—Award of mesne profits without inquiry being directed—Award at time of decree itself—If in contravention of rule—Executability of

profits—Award of mesne profits by final decree—Permissibility.

The C. P. Code has not expressly laid down any pro-

——O 20, R 13—*Administration suit—Decree in—Consequences of—Power of Court to pass order staying or restraining execution by creditor of his decree—C P. Code, S 151 and O. 39 Rr 1 and 2—Application of.*

Though an administration suit is filed only by one creditor, the decree passed in the suit is in favour of all the creditors of the deceased debtor. No one should be allowed to have an advantage over another with respect to the enforcement of his claim against the estate of the deceased The Court passing the administration decree has jurisdiction to pass appropriate orders to prevent the execution of his decree by any particular

administer the entire

editors—all of whom

could be considered as

It can pass orders

staying execution by a creditor of his decree, or

C P. CODE (1908), O. 20, R. 17.

order, in the nature of injunction restraining him from executing his decree. Such orders are consequential orders and have to be passed to give full effect to the decree in the suit. It is unnecessary to invoke S. 151 or O. 39, Rr. 1 and 2, C P. Code, for the purpose of passing such orders An applicant for such order need only invoke the decree in the suit in their aid. (*Madhavan Nair, J*) NICHOLSON TOWN BANK, LTD, TANJORE *v.*

——O. 20, R. : to 120 of the Validity of latter ru OF PRACTICE, RR. 114 TO 120.

(1938) 1 M.L.J 495 (F B.).

——O 21, R 1—*Applicability—Compromise of claim proceedings—Agreement to receive in instalments—In default of payment on due dates, whole amount to be paid—Default on due date, a holiday—Tender into Court next day—Right to apply for full amount, if arises.*

The agreement between parties was that the amount due should be paid in instalments, and if there was any default in such payment, the whole of the amount is to become payable. In such a case where the due date fell on a holiday and the instalment was not paid, it could not be deposited in Court on the next working day relying upon O 21, R 1, C. P. Code, for where two alternatives are provided one cannot be chosen in such a manner as to prejudice the rights of the other party One could not commit a default and the time in derogation of the terms sett parties In such a case the entire payable (*Bennet, Ag C.J. and G.*) ROSHAN LAL *v* GANPAT LAL I.L.R.(1938) All. 337= 174 I.C 986 = 10 R A 641=1938 A L R. 365= 1938 A.L.J. 121=1938 A W.R. (H C.) 93=

——O 21, R. 2—*Adjustment which judgment-debtor makes ... decree-holder in partial adjust... agrees to pay balance in instalments—Compromise, if adjustment.*

Where a compromise states that certain decrees ... or had been ... justment of ... d by means ... an adjust- do amount to substitution of a new decree for decree. (*Abdul Rashid, J*) DARU MAL *v.* TODA **40 P L.R 264=A I R 1938 La'**

——O 21 R 2—*Adjustment—Contract that judg*

the judgment-debtor and acceptance thereof by the decree holder is a legal adjustment of the decree. Thus if *A* holds a decree against *B* and *B* offers to transfer certain property to *A*, and *A* accepts that promise to transfer in whole or part satisfaction of his decree, that is a binding contract which constitutes ... of the decree in whole or in part and can ... *B* in bar of execution. But if *A*, as is ... agrees to accept the transfer of the property in whole or part satisfaction of his decree, at that stage there is no concluded agreement between the parties, but *A* has really made a counter offer which can be accepted by *B* only by performance, *i.e.*, by the actual transfer of the

C. P. CODE (1908) O. 21, R. 2.

property. In this latter case there is no adjustment until the property has been actually transferred. (*Roberts, C.J., Dunkley and Braund, JJ.*) ARUNACHALAM CHETTYAR *v.* V.M.R.P. FIRM

1938 Rang L R. 385=175 I.C. 498= 10 R R. 600=A I R 1938 Rang 202 (F.B).

——O. 21, R. 2—*Adjustment of decree—Executory contract—If enough.*

enforcible even though executory, it might operate as an adjustment of the decree. Distinction must be made, however, between a case where the decree holder accepts as an immediate satisfaction or adjustment of the decree a promise of the judgment-debtors to do something in future and the case where the agreement is to accept a decree as adjusted or satisfied only if the thing promised is actually done at a future date (*Mukherjea, J*) SERAJUL HAQUE *v.* NOABALI MEAH.

42 C W.N. 313.

——O. 21, R. 2—*Adjustment—Executory contract.*

An executory contract may form the subject of an adjustment But where a compromise does not completely extinguish the rights of the plaintiff under the preliminary decree, but provides for their revival in cases of default, such a compromise is not an adjustment. (... ly, JJ.) V. N. A FIRM *v* BANK OF **A.I R. 1938 Rang. 353.**

——*Adjustment—Statement by decree-... standing has been arrived at with judgment-debtor and that time has been given to complete it—If amounts to.*

Where on the statement of the decree-holder's agent ...

case to a certain date and on that date consigned the proceedings to the record room.

Held, that the alleged adjustment was merely an inchoate agreement; an adjustment was under consideration and was to be made on the fulfilment of certain conditions; and that it was not an adjustment actually ... promise, and it ... urview of O 21, (*Mahomed JJ*) ... HAGWAN SINGH. **(1938) Lah 470.**

——O 21, R 2—*Applicability—Execution by attachment of decrees in favour of judgment debtor—Realisa...—If a payment out of Court.*

Where a decree holder applied for execution by ...tchment of certain decrees in favour of his judgment-debtor and in pursuance of an order of Court proceeded to realise the amounts due in respect of the attached decrees, the payments made by the judgment-debtor under the attached decrees, are to be deemed to have been made in Court and not outside Court. Hence O. ... to cases of such payments. ... *J J*) THOMAS SKIN- **I L.R. (1938) All 291= ... 430=1938 A L R 276= 10 R A. 572=1938 A L J. 59= 1938 A.W R. (H C) 80=A I R. 1938 All. 141.**

——O 21, R 2—*Applicability—Payment prior to decree—If can be pleaded.*

C. P. CODE (1908), O. 21, R. 2.

O 21, R 2, C. P. Code, applies only where money payable under a decree is paid out of Court. But where money is paid at a time when there was no decree in existence, O. 21, R 2 cannot apply. (*Pollock, J.*) BHASKAR DATTATRAYA *v.* NILKANTH DATTATRAYA. **177 I C 673 = 11 R N 159 = 1938 N.L J. 148 = A I R 1938 Nag. 265.**

——O. 21 R 2 (Patna Amendment)—*Applicability—Pending execution.*

Order 21, R 2 refers to the stage when there is no execution case pending and when the judgment-debtor comes to notify to the Court an adjustment outside the Court. The rule therefore does not apply when an execution case is pending. (*Mohamad Noor, J.*) SURAJMAL *v.* MANBODH BHAGAT LALL CHAND RAM. **4 B R. 501 = 174 I C 1007 = 10 R A. 563 = A I R 1938 Pat. 204.**

——O. 21, R. 2 and Limitation Act (IX of 1908), Art. 174—*Payment of decree amount—Decree holder applying to record satisfaction of decree—Absence at the time of enquiry—Dismissal of application—Subsequent application by judgment debtor to enter satisfaction—Dismissal of it as being time barred—If sustainable—Proper procedure.*

the decree-holder denied the payment but was absent from the enquiry and his vakil reported no instructions. The Court struck off the decree-holder's petition but reserved the judgment-debtor's right to claim full satisfaction in proper proceedings. The judgment-debtor

an independent application was not saved by S. 5 or S. 14 of the Limitation Act; but the lower Court was

yet been passed. Any agreement which merely relates to the execution of the decree and does not attack the decree itself could be pleaded in bar of execution (*Pandrang Row and Abdur Rahman, JJ.*) MEENAK-

C. P. CODE (1908), O. 21, R. 6.

—*Enquiry into truth or otherwise of adjustment—If necessary—Recording of satisfaction—What amounts to—Duty of Court.*

In order that a certification of adjustment by the decree-holder may have effect, it is not necessary that there should be any specific order by the Court A certificate presented by the decree holder is none the less operative and enures none the less for the benefit of the judgment debtor, because the Court has passed no order recording satisfaction of the decree. The record contemplated under O. 21, R. 2 (1) is merely an order that the certificate of the decree holder be placed on the record. The Court is not required to go into the question whether there has or there has not been an adjustment as stated The certificate is sufficient and all that the Court need do is to say that the certificate shall be kept upon the record. It is only under sub-R. (2) of O. 21 R 2, when the judgment debtor makes an application that it is necessary for the Court to go into the question whether his allegations are or not true (*Allsop, J.*) CHAMPI BAI *v.* PEAREY LAL. **174 I C 254 = 1938 A L R 249 = 10 R A 555 = 1937 A W R 1200 = 1937 A.L.J. 1305 = A I R 1938 All 116.**

——O 21, R. 2 (3)—*Adjustment and payment—*

...nt and non default—Burden of proof—Power of executing Court to inquire into payments. *See* C. P. CODE, S. 47 AND O. 21, R. 2 (3).

tion of decree. Neither the mistake in the certificate of non-satisfaction nor the omission of the decree holder to have the mistake in the certificate corrected would render his application for execution one not in accord-
...art of the decree-
...for execution after
...application which
...aw (*Fazl Ali and*
...PRASAD SINGH *v.*
1938 Pat. 513.

——O. 21, R 10—*Execution application presented after office hours—Validity.*

——O 21, Rr 10 and 11—*Transfer of British Indian decree to Burma Court for execution—Transfer prior to 1st April, 1937 but application for execution after that date—Effect.*

Where a decree of a British Indian Court is transfer-

the 1st of April, 1937, the British Indian Court has become a foreign Court and its decree cannot be executed when there is no reciprocal arrangement between India and Burma for purposes of execution. (*Baguley and Mosely, JJ*) K K. K M CHETTIAR *v.* SELLAMI ACHI. 1938 Rang L.R. 355 = A I R 1938 Rang. 385

——O 21, R 11—*Absence of verification and particulars—Effect.*

Where an execution application was not verified, nor contained the particulars required by R 11 of O. 21 it should not be entertained. (*Weston.*) MAN MAL *v* KANWARI LAL. 1937 A M L J. 89

——O 21, R 11—*Amendment of exe ... tion—Form.*

1937 A.M.L.J. 89.

——O. 21, Rr. 11 and 12 ... not com-

down therein, and unless the Court re... tion or calls upon the decree holder t... sub R. (1) of R. 17, there is no ... before the Court (*Addison and Din Mohammad, JJ.*)

——O. 21, R. 12—Scope and applicability. *See* C. P. CODE, S. 50 AND O 22, RR. 11 AND 12

1938 N.L J. 312.

——O 21, R 13 (7)—*Property attached specified as owned by judgment debtors—Share of each judgment-debtor—If should be mentioned.*

A decree holder asked the Court to bring to sale certain properties described as a half-share belonging to the judgment debtors in certain specified holdings What was the exact interest of each of the judgment debtors individually in the property was not specified. It was stated that the whole of this half-share belonged to the ... The sale was challenged on the ... not been specified exactly what share ... judgment-debtors possessed. ... not necessary that this should be ... holder held a decree against each of the judgment debtors. He had brought this property to sale because it was the property of one or other or all the judgment debtors and that was sufficient for his purpose. What the Court sells is the right, title and interest of the judgment-debtors in this property. It is

——O 21, R. 15—*Joint decree—Application for execution not on behalf of all—Defect, if fatal.*

Where an execution application although filed by only one of two joint decree holders, does not purport to have been filed on behalf of both, such a defect is fatal to the application. (*Weston.*) MAN MAL *v.* KANWARI LAL. 1937 A M L.J. 89.

——O 21. R. 15—*Joint decree holders—Application by one to execute decree—Competency—Conditions.*

In order to comply with R. 15 of O 21, C. P. Code, it is necessary to state in the application by one joint

... 38 R. 41—A.I.R. 1938 Pat 1...

——O. 21, R. 16—*Applicability—Decree against several persons—Death of one judgment debtor—Right of deceased surviving to decree holder and some judgment-*

... assignee there- ... executants and ... Hindu female ... the plaintiff and defendants 8 to 10 as her reversionary heirs. ... the decree, ... become ... C. P. ... ms apply ... applied, ... and the ... one and ... treated as ... tled only ... h defen- ... to that ... proceeded ... of the ... *man, JJ.*) ... ILLAI ... N. 572 = ... Mad 814 = (1938) 2 M L J. 156.

——O. 21, R. 16—*Applicability — Preliminary decree for mesne profits—Application for ascertainment—Assignment pending inquiry—Assignee brought on record and final decree passed—Application for execution—If falls under O 21, R. 16.*

O 21, R. 16, C P. Code, is primarily intended for those cases where the name of the applicant for execution of the decree does not appear as a decree holder in the decree but in which he bases his claim to execute on the

C. P. CODE (1908), O. 21, R. 16

ground that he is an assignee or transferee of one or more decree holders. Where a preliminary decree for mesne profits is assigned pending an inquiry into the mesne profits, and the assignee is substituted and gets a final decree passed, an application by him to execute that final decree is not governed by O 21, R 16 or the provisos thereto. (*Fazl Ali and Agarwala, JJ.*) NAND KISHORE LALL v CHANDRIKA PRASAD SINGH 17 Pat 206=177 I C 830=11 R P 189=5 B R 26=A I R 1938 Pat 462.

——O 21, R. 16—*Construction —"Transferee"—Assignment of decree by deed in benami for another—Benamidar cation by real assignee—If one " —Limitation Act, Art* 182 (5)

Where a decree is transferrec ment in writing the person na the deed is the "transferee" who execution under O. 21, R. 16. C the assignment in his name is b The real or beneficial transf "transferee" An application by th execution is not in "accordance with save limitation for a later application under Art. 182 (5) of the Limitation Act. The mere fact that the real assignee gets a decree in a suit declaring that he is the

diction by the Court in a proceeding to execute the

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1938 A W R (H C.) 160=A I R 1938 All 256

——O 21, Rr. 16 and 18—*Relative scope— decrees—Assignment of one—If bar to set off*

O 21, R 18 C. P. Code, is not inapplicable tc case of an assignee of a decree, and R 16 of O. 21, is no bar to the application of R. 18 When a question of cross-decrees arises the provisions of R. 18 of O 21 cannot be ignored (*Bennet* LOKI NATH.

1938 A L R
1938 A.W.R (H C

——O. 21, R. 16 seco *Conditions—Decree for me before ascertainment of am*

Before the second provis can apply, it must be showr

C. P. CODE (1908), O. 21, R. 18.

ferred, is a money decree and that the transfer took place after the decree sought to be executed was passed.

Quaere—Whether a decree for mesne profits, before the amount is ascertained, can be regarded as a money decree. (*Fazl Ali and Agarwala, JJ.*) NAND KISHORE LALL v. CHANDRIKA PRASAD SINGH. 17 Pat 206=177 I.C. 830=5 B R. 26=11 R P. 189=A I R. 1938 Pat. 462.

——O. 21, R. 16, second proviso—*Order substituting purchaser of decree—Subsequent objection that he is benamidar for one of judgment debtors—If barred by*

fact at
SHEO
230=
246=
A I.R 1938 Oudh 106.

——O. 21, R 17—*Amendment—Powers of Court—Application for execution by attachment—Particulars of*

plication and unless a case can be brought strictly within

——O 21, Rr. 18 and 19—*Scope—If exhaustive—Different claims arising at different stages in same suit or proceeding—Set off—Inherent powers of Co*

C. P. CODE (1908), O. 21, R. 19.

amount payable by that party to the c decree, when the latter applies to exec his favour. (*Rupchand Bilaram, Ag J*) MT. NONIBAI *v.* JETHANAND.

32 S.L.R. 162=10 R.S. 218=
173 I C. 574=A.I.R. 1938 Sind 31.

——**O. 21, R. 19**—*Applicability—Creditors of parties also concerned.*

O. 21, R. 19 deals with a case in which only the two parties are entitled to recover sums of money from each other. As such it cannot cover a case in which the creditors of one of the parties are also concerned. (*Thomas,*

——**O. 21, R. 19**—*Applicability—Mortgage suit—Decree for amount recoverable from mortgaged properties—Decree for smaller sum by way of costs in favour of mortgagor personally against mortgagee—Set-off—Right of mortgagor—Defendant to execute his decree.*

O. 21, R. 19, C. P. Code, only requires that the two parties must be held entitled to recover sums of money from each other. A decree to *A* against *B* for a sum of money to be recoverable from his property is as much a decree to recover the sum of money from *B*. The decree need not necessarily be a decree d recover the sum of money from *B* pers section does not say or provide in what decree is to be executed. The rule woulc to the case of a decree for sale in enfor

——**O. 21, R. 22**—*"Against the party"—Meaning.*

Expression "against the party" means adverse to the party. Hence an order directing the execution proceedings to be struck off for the default of the decree-holder

against the property of a deceased judgment-debtor in the absence of his proper legal representative. The executing Court is not precluded from deciding that a person is not the proper legal representative by reason of the fact that the Court which passed the decree has already substituted that person as legal representative after notice to him but in his absence. When the proper legal representative is some other person, namely the widow of the judgment-debtor, the order substituting a wrong person cannot be taken to be a decision to

C. P. CODE (1908), O. 21, R. 32.

tive ala,

17 I C. ... P.W.N. ... B.R. ...=
11 R.P. 91 =19 Pat.L T. 193=
A.I.R. 1938 Pat. 372.

——**O. 21, R. 22**—*Notice—Absence of—Objection as to—When to be raised.*

As the absence of notice under O. 21, R. 22 goes to the root of the jurisdiction of the executing Court, the objection can be taken at any time. (*Fazl Ali and Rowland, JJ.*) BRAJOBALA DEBI *v.* MADHUSUDAN ... B.R 446=10 R.P. 523=
A.I.R. 1938 Pat. 162

—Compliance—Minor judg- ...ity—Notice issued to him ... Court unaware of true age of judgment debtor—Sale—If nullity—Irregularity—If ground for setting aside sale

The issue of a notice to a major judgment debtor as if he were a minor is not necessarily fatal to further proceedings in execution, and a sale in execution cannot be held to be null and void on that ground. If no notice of any kind is issued to a judgment-debtor, there is a refusal to carry out the plain duty imposed upon the Court by O. 21, R. 22, C. P. Code, and the Court has no jurisdiction to conduct the sale subsequently. But there is a very clear distinction between a case in which

able against assignee of decree. *See* C. P. CODE, S 49 AND O. 21 R. 29. 40 Bom L R. 188.

——**O. 21, R. 31**—*Decrees executable under.*

A decree for delivery of specific movable property ... be enforced by the stringent method prescrib... an be passed only in a ... proves facts which ...ery under the provi-

... R. 31 do not include money. 37 M. 381 Rel on. (*S. K. Ghose and Nasim Ali, JJ.*) KARNANI INDUSTRIAL BANK, LTD. *v.* BARABANI COAL CONCERN LTD. 42 C W N. 523=
A I R. 1938 Cal. 471.

——**O. 21, R. 32**—*Scope—Prohibitory injunction—Disobedience by defendant—Remedy of plaintiff—Fresh suit—Necessity.*

Where a decree granting a prohibitory injunction is disobeyed by the defendant, the plaintiff is not bound to bring a fresh suit to convert the prohibitory injunction

into a mandatory injunction so as to enable him to

A.I.R. 1938 Pat. 522.

——O. 21, R. 32 (5)—*Applicability—Prohibitory injunctions.*

The act required to be done as contemplated by O. 21, R. 32 (5) has reference only to a positive act such as is required to be done under a mandatory injunction

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——O. 21, R. 32 (5)—*Appl*

injunction—Relief under R 32 (

The injunction contemplated b

mandatory injunction and not a

and the relief to which a party is

for specific performance of contracts. The rule simply

Under O 21, R. 35, C. P Code, a final decree for foreclosure and possession can only be executed against the person bound by the decree. When a person not bound by the decree is in possession of his share in the property, the decree for possession cannot be legally executed against such person. If the Police assist the decree-holder in removing that person from possession

Mode of delivery of possession.

Where the property covered by the decree is joint undivided property, the proper mode of delivery of possession in execution proceedings is in the manner provided by O. 21, R. 35 (2), C. P. Code. (*Guha and Mitter, JJ.*) DWARIKA NATH MONDAL *v.* RAM NATH BARMAN. 67 C.L.J. 39.

——O. 21, R. 40—*Arrest of judgment-debtor—Person not earning more than Rs. 40—Arrest, if can be ordered.*

As the normal limit under which a man cannot reasonably be expected to support himself and a family should be taken to be Rs. 40, because of S. 60 (1) (*i*), C. P. Code, unless there is anything on the record from

which it can be said to have been proved that a judg-

than Rs 40 a month, and fails

decree holder the Court should

judgment-debtor. (*Baguley and*

NARAYANA *v.* SEETHA RAMA-

A.I.R. 1938 Rang 477.

Scope and object of—"Any

denying debt—Power of Court

to produce account books.

C. P Code, is in effect a provision to obtain delivery in aid of the execution of the decree which the decree holder has obtained. The expression "any other person" might include a garnishee, *i.e.*, a person who owes or is alleged to owe a debt to the judgment debtor. The Court is empowered to summon

or cross examination for the purpose of determining

——O. 21, R. 46—*Attachment of debt due to judgment debtor—Equitable charge already created by judgment-debtor over such debt—Position of attaching creditor—Equitable charge—What amounts to—Charge on future property—Validity.*

In a garnishee proceeding, the attaching creditor stands in the shoes of the judgment-debtor. No attach-

respect of the same in favour of another person, the attaching creditor acquires no larger rights than his debtor. An agreement between a debtor and a creditor that a fund should be applied in a particular way will not create a valid equitable charge upon the fund. It is further necessary that an obligation should be imposed in favour of the creditor to pay the debt out of the fund. The test really is whether there was an

assignment in equity, which will attach to the property, when it comes into existence. Where *X* adv money to *Y* for the purpose of enabling the latt

C. P. CODE (1908), O. 21, R. 46.

carry out his contracts with Z and it was stipulated that all bills made out by Y against Z would be forthwith made over to X who would have the exclusive right to collect the monies due on the bills under an irrevocable power of attorney executed by Y in his favour and the amounts thus realised would be appropriated by X towards repayment of the advances made by him

Held, that there was an intention to in favour of X in respect of the money and that an attachment of the bills by must be taken to be subject to that charge. (*Mukherjea, J*)

——(

prohibit

It is impossible to hold that the Controller of Patents is a "person in possession of the same" within the meaning of O. 21, R 46, C. P. Code. Therefore, the service of a prohibitory order upon the Controller of Patents is not an attachment of the patent within the meaning of S. 51, C P. Code (*Panckridge, J*) *v.* HIRALAL BANJARA.

——**O. 21, R. 49**—*Interest of par ship assets—If movable property.*

An interest of a partner in partnership assets is intended to be treated as movable property under R 49 of O. 21 (*Addison and Din Mohammad, JJ*) BARKAT RAM *v.* BHAGWAN SINGH. **177 I C. 116=11 R L 269=A I.R. 1938 Lah 65.**

——**O. 21, R 50**—*Decree obtained against firm by serving summons in suit upon two persons as partners—Execution petition stating three others as remaining partners—Leave not obtained from Court—Validity of execution*

Where a decree is obtained against a firm by serving summons in the suit upon two persons as partners of that firm, the mere fact that three other persons are stated to be the remaining partners of the firm in the petition

RADHA CANTA PAL *v.* PULIN KRISHNA PAL. **177 I C. 812=11 R C 277=42 C W N 310=A I R 1938 Cal. 316**

——**O 21. R 50 (2)**—*Jurisdiction—Application for granting leave—If* ultra vires.

The Court which passed the decree is competent and has jurisdiction to grant leave to the decree-holder under O 21, R. 50 (2), C. P. Code, even after the decree h. Court. ecution t jurisdicti *Yorke, J* LAL BIF 1

——C

decree be,

purchaser to execute decree.

C. P. CODE (1908), O. 21, R. 57.

A purchaser of an attached decree has no right to execute that decree for himself, although no notice of attachment was served upon his vendor previous to the sale by him of his decree. Sub Cl. (6) of R. 53 of O. 21, C. P. Code, affords no help to the purchaser at all. Its purpose is to protect payments made by the

not prevent the attaching creditor from executing the decree himself. (*Henderson, J.*) SARAT CHANDRA DAS *v.* JATINDRA NATH CHAKRAVARTI. **175 I.C. 912=11 R C. 18=66 C L J. 459=A.I.R 1938 Ca.**

——**O. 21, R. 54 and O. 38, R. 5**—*Conditional order of attachment before judgment—No order absolute—Requirements of O. 21, R. 54 complied with—No process issued—Validity of attachment.*

Where there was a conditional order of attachment

the mere omission to record an order absolute does not make the attachment ineffectual. (*M C. Ghose, J.*) AMODINI DASI *v* RAGHUNATH MALLICK. **176 I C. 166=11 R C. 45=66 C L J. 222=A I R 1938 Cal 236.**

——**O. 21, R. 57 (as amended in Nagpur)**—*Application "struck off" as infructuous but attachment kept pending—Effect of—If dismissed or merely adjourned—Subsequent receipt of assets by Court—Right to rateable distribution—C. P. Code, S. 73*

Under R 57 of O 21, C. P. Code, as it now stands after its amendment in Nagpur in 1930, a Court has power to dismiss an execution application and to continue the attachment. Where a Court passes an order to the effect that "the case is struck off as wholly

——**O. 21, R 57**—*'Default'—Decree holder's in-*

arrant of ng to the judgment debtor was issued When the bailiff went to the spot accompanied by the decree-holder's representative, he was informed that the property was already sold On a report being submitted by him to that effect,

son and Din Mohammad, JJ.) PEOPLES BANK OF

C. P. CODE (1908), O. 21, R. 57.

Where by an order execution proceedings are 'consigned to the record room,' the order is tantamount to 'a dismissal' of the application concerned and a subsisting attachment may come to an end. (*Bhide, J.*) DURGA DAS BHAGWAN DAS v. PEOPLE'S BANK OF NORTHERN INDIA. 175 I C

39 P.L.R. 967=

——O. 21, R. 57—*Executic*

to record room at request of

tion of attachment.

Where at the request of the decree holder, the executing Court consigned his application for execution to the record room but maintained the attachment,

Held, that the application for execution was dismissed by the exe

nated with the

was not possi

Rashid, J.)

——O. 21, R. 57—*Scope and applicability of—'Default'—Compromise—Execution proceedings 'consigned to record room'—Attachment, if ceases.*

For an attachment to come to an end under O. 21, R. 57 the three things necessary are, an attachment 'in

DAS v. PEOPLE'S BANK OF NORTHERN INDIA.

175 I C. 801=11 R.L 53=39 P L R. 967= A.I.R 1938 Lah 1

——O. 21, Rr. 58 and 63—*Applicability—Sale mortgaged property in execution — Application mortgagee under O. 21, R. 58 as against purchase Dismissal—Suit by mortgagee on mortgage beyond one*

It may be

One *R* was the owner of cash certificates of certain value in the custody of the Post Master General. He subsequently died but his heirs did not take any steps to

C. P. CODE (1908), O. 21, R 58.

h certificates in ac- e Post Office Rules. decree against the The Court thereupon called upon the Post Master General to remit certain sum deposited in the Post Office in connection with cash certificates and allowed the attachment to stand. The Post Master General thereupon made a formal application to the Court under O. 21, R. 58 of C. P Code The

with the provisions of the Post Office Cash Certificate Act. This being the case the Court ought to have adjudicated on the application under O. 21, R 58.

Held, further, that having regard to the provisions of S. 214 of Succession Act, the Court should not have

178 I C 152=A I R. 1938 Cal. 445.

——O 21, R. 58—*Enquiry—Necessity—Scope and extent—Refusal to enquire—Revision.*

Where an applicant under O. 21, R. 58 claims that he has a share in, and is in joint possession with the

of by the be of at the AH

1938 A M L J 23.

decree against the mortgagor. His proper remedy is to . 100 and 103, always that he suit to have the *Mohammad, JJ.*) AIT RAM.

ah 593=177 I C. 928= =A.I R 1938 Lah. 568.

on lodged after execution

R. 58, C. P. Code, lodged is subsequently confir- *n and Din Muhammed, JJ.*) SANTLAL v. UDHORAM WALIT RAM.

0 P L R 522=177 I C 928= h 593=A.I R. 1938 Lah. 568.

jection under—If can be made

not cease when the property is a valid objection can be made ttachment under O. 21, R. 58. NDRA JAGANNATH v. KAYAM

178 I C. 410= A.I R. 1938 Nag 475

——O. 21, R. 58—Revision—Dismissal of objections—Interference by High Court. *See* ODE, S. 115—REVISION. A. . 319.

to O. 21, R. 66. *See* BIHAR MONEY-LENDERS' ACT, S. 16. 19 Pat.L.T. 760.

——O. 21, R. 69—*Non-compliance with—Sale, if nullity.*

The failure to comply with the provisions of O. 21, R. 69, C. P. Code, would not alone render a Court sale a nullity, bu

aggrieved

67 C.L J. 96.

——O. 21, R. 69 (2) (as amended in Nagpur)—*Collector's sale—Collector accepting bid at sale held by Tahsildar beyond seven days—Legality.*

In a Collector's sale, it is the Collector who has to accept the bid though it may be the Tahsildar who holds the sale The period of seven days in O 21, R. 69 (2), C. P Code, has been extended to 15 days in Nagpur,

The waiver of the necessity for a fresh proclamation necessarily implies a waiver of objection to any defect appearing on the face of the sale proclamat

waiver of any necessity for a fresh sale would not imply a waiver of the right to

allowed

purchase

HAMMAD

544 (1).

to bid—

to bid on

less than

bids for a

, the sale

ld be to

deprive R. 72 (1) of its value. The conditions cannot be disregarded. (*Roughton, F.C.*) MST. SAWANABAI *v.* KRISHNAJI. 1938 N.L J. 180

——O. 21, Rr. 82-92 — *Execution sale—Setting aside of—Power of Court.*

A sale in execution can only be set aside if the ground

being on him who applies for reversal of the sale, the Court has no option but to confirm the sale under O. 21,

R. 92. (*R. C. Mitter and Sen, JJ.*) NERODE CHANDRA *v.* OFFICIAL TRUSTEE OF BENGAL A.I.R. 1938 Cal. 798.

——O. 21, R. 84—*Failure to deposit—Irregularity.*

The omission to pay 25 per cent. of the sale money

A.I.R 1938 Pesh 36.

——O. 21, R. 85—*Applicability—Withdrawal of deposit on sale being set aside.*

O. 21, R. 85, C. P. Code, has no application to a case where the purchaser had duly deposited the price but had withdrawn it on the sale being set aside. (*Stone, C. J. and Bose, J.*) TARACHAND *v.* KALU. 1938 N L J. 207.

——O. 21, Rr. 85, 86 and 90—*Failure to deposit 75 per cent. of purchase-money within fortnight—Duty of Court.*

The 'publishing' of the sale has reference to all proceedings that take place till the sale is actually held.

ing into Court full amount of the purchase-money within the time allowed by O. 21, R 85 the Court has

09 & 1004=

38 Lah. 198.

—*Failure to*

re of whole

the cost of the general stamp to be affixed to the sale certificate only the initial deposit of 25% can in any case be forfeited. The whole amount cannot be forfeited. (*Stodart, J.*) PONNAMBALA MUDALI, *In re.* 48 L W. 416= 178 I C. 96=1938 M W N 864= A.I.R 1938 Mad. 905=(1938) 2 M.L J. 529.

——O. 21, R 86—*Scope—Re-sale—Default in payment of balance of sale price—Duty of Court.*

O. 21, R. 86, C. P. Code, makes it obligatory on the Court to re-sell the property in case default is made in payment of the balance of the purchase money as required by O 21, R. 85. The discretion vested in the Court is only as regards the forfeiture of the deposit. (*Venkataramana Rao, J.*) MONNI AIDRUZ *v.* SAPPANI MIRA MOHIDEEN. 1938 M W N 1031= 48 L W. 659=(1938) 2 M L J. 833.

——O. 21, R. 89—*Conditional deposit—Validity—Alternative applications under Rr. 89 and 90—Maintainability.*

interested

ion to his

not accept

A judgment-debtor made applications under Rr. 90 and 89. The prayer under R. 89 was in the first place "in the

alternative " "It was to be taken into consideration only if the first prayer in the application which was the main prayer was not granted, namely, if the sale was not set aside under R. 90. Further, even this alternative prayer was hedged round with conditions The deposit made was to be retained
was set aside. If the sale was co
refunded. The main prayer unde
by the judgment-debtor subsequent

Held, that the application was
not maintainable and the date on w
under R. 90 was dropped must be
on which the application under F
application if more than thirty days after the date of the sale was accordingly time barred. (*Lobo, J.*) HARIRAM DIPCHAND *v.* RAGHUNATH JETHABHAI.
177 I C. 952 = A.I.R 1938 Sind 177.

——O 21, R. 89—*Construction—Deposit not accepted by decree holder—If amount received by decree-holder.*

R. 89 has to be strictly construed and even a mistake

DIPCHAND *v.* RAGHUNATH JETHABHAI.
177 I.C. 952 = A.I R. 1938 Sind 177.

——O 21, R. 89—*Deposit under—Sufficiency—Test—Amount mentioned in proclamation of sale.*

Where in execution of a mortgage decree, the properties were sold and an application was made by the

been deposited as required by O. 21, R. 89. (*Leach, C. J and Burn, J.*) SUBRAMANIA IYER *v.* VISWANATHA PILLAI. 46 L W. 922 = 1938 M W.N. 15.

——O 21, R. 89 and Contract Act, S 72—*Failure to certify after receiving satisfaction—Sale in execution of such satisfied decree—Deposit under O. 21, R. 89 by owner and setting aside of sale—Right of owner to recover it from the decree holder.*

Where a decree holder whose decree is f
fails to enter up satisfaction of the decree
to execute his decree fraudulently and the
sold in court auction and where the owne
amount due under O 21, R. 89, C.P. Co
the sale set aside, on a question whether such an owner can recover the money from such a decree holder.

Held, that the owner's right to recover back the money paid under compulsion of execution which

subsisting decree. (*Venkatasubba Rao and Abdur Rahman, JJ.*) PAPPU REDDIAR *v.* PICHU AYYAR.

(1938) M W N. 164 = 47 L.W. 188 = A.I.R. 1938 Mad. 493 = (1938) 1 M L J 829.

——O. 21, R 89—*Interpretation—If refers to withdrawal by decree-holder of sale proceeds deposited.*

The words "less any amount which may, since the

——O. 21, R 89—*Judgment-debtor depositing five per cent. for payment to auction-purchaser—Allegation that decree satisfied out of Court—Sale, if can be set aside.*

A judgment-debtor can deposit five per cent. of the purchase money in Court to be paid to the auction-purchaser and get the sale set aside without depositing the

execution transferred by Court—Application to Court to set aside sale—If incompetent. *See* LIMITATION ACT, S 4. 40 Bom.L R. 152.

——O. 21, R. 89—*Poundage fee—Duty of judgment-debtor to pay.*

There is nothing in O. 21, R. 89 which makes it necessary for the judgment debtor to pay in the pound-
being set
nt debtor
for any
paid in
and Mu-
ARDHAN
C 168 =
Cal 523.

——O. 21, R. 89—*Right to apply—"Interest"—Sale by judgment-debtor after Court sale—Application to set aside sale by judgment debtor and purchaser—Competency.*

A judgment-debtor who, after the Court sale, transfers his interest in the property sold in execution of a decree, retains sufficient "interest" within the meaning of O 21, R 89 to allow him to apply under the Rule. But the

Although O. 21, R. 89 speaks of any person, either owning such property or holding an interest therein by virtue of a title acquired by such sale, it does not confer the right to make a deposit on a person who had pur-

before confirmation thereof—Power of Court to refuse to confirm sale.

O. P CODE (1908), O. 21, R. 90.

It cannot be said that in no circumstances can a ... unds other than ... 1 of O. 21, C. P. ... the Court that ... sale is ... 48, ... confirm being satisfied that the application is barred, duty of the Court to see that the appl ... giving effect to it. (*Niamatullah, Ag.C.J. and Allsop, J.*) COLLECTOR OF BENARES *v.* JAI NARAIN RAI.

173 I.C. 428 = 10 R A. 480 = 1938 A.L.R 142 = 1937 A W.R. 1222 = 1937 A L J. 1349 = A.I.R. 1938 All. 89.

——O. 21, R. 90—*Applicability—Objection as to saleability of property.*

O. 21, R. 90, C. P. Code, applies only to irregularities or fraud in publishing or conducting a sale and not to questions of saleability of the property concerned. (*Gruer, J.*) MAROTI *v.* KISANLAL 1938 N.L J. 389 = A I.R. 1938 Nag 558.

——O. 21, R. 90—*Application under—Power of Court to dismiss for default.*

... VALIA ... 193 ...

——O. 21, R. 90—*Irregularity—Absence of attachment.*

The absence of attachment prior to the sale of immovable propert ... more than an irr ... the sale in the ... from such want ... Foll. (*Addison* ... RAM CHUNI L ...

——O. 21, R ... R 22 issued to ... by guardian—Effect of—Sale—If to ... C. P. CODE, O. 21, R. 22.

——O 21, R. 90—*Irregularity—Sale under hammer* ...

NARAIN SINGH *v.* KANDHAI LAL DURGA ... 10 R P. 129 = 177 I.C. 138 = 4 ...

——O. 21, R. 90—*Material irregularit* ... *of notice under O. 21, R 22—Effect on sale.*

... *ment of sale—Adjournment announced only to decree-holder—Failure to specify hour of adjourned sale.*

C. P. CODE (1908), O. 21, R. 90.

Where the Naib Tahsildar holding a sale adjourns it to another date, but informs no one but the decree holder about the adjournment and does not specify the hour to ... material ... be an ... ale and ... *F.C.*)

20 N.L J. 283.

... *l irregularity—* ... *reasons.*

O. 21, R. 69, C.P. Code, no doubt directs the sale officer to record his reasons for the adjournment of the sale. But his failure to record his reasons would not amount to a material irregularity, for it cannot be said to go to the root of the matter. (*Bose and Puranik, JJ.*) ANANDI PRASAD *v.* GOVINDA BAPU.

I.L.R. (1938) Nag. 436 = 10 R.N. 210 = 172 I.C 465 = A.I R. 1938 Nag 107.

——O. 21 Rr. 90 and 69—*Material irregularity—Adjournment of sale by sale officer—Omission to specify hour.*

The failure of the sale officer to specify the exact hour to which the sale is ... mater ... hour ... applicant has sustained sub... by reason of such irregularity. (*Bose* ... *JJ.*) ANANDI PRASAD *v.* GOVINDA

I L R. (1938) Nag. 436 = 172 I C. 465 = 10 R.N. 210 = A I.R. 1938 Nag. 107.

——O. 21, R. 90—*Material irregularity—Gross under-valuation in sale proclamation—Effect of.*

Where the upset prices shown in the sale proclamation ...

... al irregularity—Non-com- *See* C. P. CODE, O. 21, 20 N.L.J. 283.

——O 21, R. 90—*Material irregularity in publishing and conducting sale—Auction price grossly inadequate* ...

... 1938 N L J. 282.

... O. 21, R. 90—*Parties—Auction purchaser—* ... *against order setting aside sale—Necessity to* ...

In an appeal against an order setting aside a sale made on an application for that purpose, the auction-

purchaser who had on notice being given to him failed to express his interest one way or another need not be added as a party and his absence is not fatal to the appeal. (*Stone, C. J. and Bose, J.*) BIRDICHAND *v.* GANPATRAO 1938 N.L.J. 303= **A.I.R. 1938 Nag. 525.**

——**O. 21, R. 90**—*Suit on mortgage—Decree—Sale in execution—Judgment debtor's* [illegible] *sale—Later mortgages by* [illegible] *properties—If possibility* [illegible] *debtor a ground to hold* [illegible] *by the sale—Reduction of* [illegible] *irregularity.*

In a suit on a mortgage [illegible] properties in execution of [illegible]

[illegible]

debtors had executed three other later mortgages for very large amounts and could not therefore get any sur plus available to them even if a fresh sale should be [illegible]

[illegible]

(almost as a matter of common form) without any more [illegible]

[illegible]

given in the proclamation of sale and that the dimensions of the houses were not stated in the proclamation [illegible]

[illegible]

——**O. 21, R. 90 (Patna amendment) Proviso** [illegible]

deposit—Appeal—Order refusing to accept security—Revision—Interference.

Under O. 21, R. 90 (1), C. P Code, as amended in Patna, the Court in an application to set aside an execution sale, has a discretion to accept landed property as security instead of a cash deposit in a proper case. If the Court refuses to dispense with cash deposit and to accept landed property as security and then dismisses [illegible]

[illegible]

A.I.R. 1938 Pat. 240.

——**O. 21, R. 90, Proviso (N.W.F.P.)**—*Execution* [illegible] *—Notice of judg-* [illegible] *illness—*

[illegible]

That the proviso to O. 21, R. 90 however applied to the case and the sale could not be set aside as the objection [illegible]

[illegible]

——**O. 21, R. 90, Proviso (ii) (Calcutta High Court)**—*Inapplicability—Defect in sale proclamation* [illegible]

[illegible]

——**O. 21, R. 90, Proviso** [illegible]

C. P. CODE (1908), O. 21, R. 91.

FIRM *v* ANDATHAL. 178 I.C. 118=

——O. 21, Rr. 91 :
sold turning out to be
debtor—Purchaser if
decree holder—Decree
ent position—Right to
of sale and satisfaction of decree.

There is at present no right either
for an auction purchaser to recover
decree holder, the purchase price
property sold turning out to be not th
judgment-debtor. As regards the decr
purchaser his rights are limited to those granted by C. P. Code, O 21, Rr. 91 and 92, and if the auction-sale is confirmed that becomes *res judicata* between him and the judgment-debtor and hence he cannot reopen the

——O 21, Rr. 91 and 93—*Scope—If exhaustive—Execution sale—*
claim by dispossessed
holding judgment-deb
plication by purchaser
Dismissal on the ground that the remedy was by way of suit—Suit by purchaser—Maintainability—Remedy of purchaser—Omission to sue to set aside order on claim —Effect.

Appellant who was the auction-purchaser of certain properties sold in execution of decree lost some of them as a result of claim proceedings under O. 21, R. 100, C. P. Code, the Court holding that the judgment debtor had no title or saleable interest in them. His application to the execution Court for repayment of the purchase money of the properties he had lost thus w
the ground that his remedy was a regula

O. 21, R 93.

Application to set aside sale—If to be made to Collector —Jurisdiction of Court. *See* LIMITATION ACT, S. 4
40 Bom L R 152

——O. 21. R. 92—*Application under—Notice to auction purchaser—If mandatory.*

Before the objection application of the judgment-debtor under O. 21, R. 92 is adjudicated upon, it

C. P. CODE (1908), O. 21, R. 92.

is mandatory on the execution Judge to send notice to

A sale cannot be said to be automatically confirmed

1938 O.A 684=A.I R. 1938 Oudh 221.

——O. 21, R. 92—*Jurisdiction—Collector's sale—Application beyond 30 days of acceptance of bid by Collector for time for payment of decree amount—Failure to offer payment of decree amount and 5%—Absence of allegation of irregularity—Order setting aside sale on ground of inadequacy of price—Legality.*

In the absence of any application under R 89, 90 or 91, C. P. Code, an execution sale has to be confirmed

set aside the sale on the ground that the price fetched was inadequate. (*Greenfield, F.C.*) RAMCHANDRA *v* ARJUN. 1938 N L J. 10.

——O. 21, R. 92—*Order refusing to set aside sale—*

set
A-
=
)7.
e—If controlled or over-
-Lenders' Act *See* C. P.
11. 1938 N L J. 15.
e—If controlled by C. P.
I. *See* C. P. DEBT CON-
1938 N L J. 60.

——O 21, Rr 92 and 93—*Withdrawal of deposit on*

——O 21, R. 92 (1) and (2)—*Confirmation of sale—Power of Court to refuse—Sale under final decree, pending appeal from the preliminary decree—Variation of preliminary decree—Sale in favour of third party, if can be set aside.*

Where a final mortgage decree was passed pending an appeal from a preliminary decree and a sale is held, the

C. P. CODE (1908), O. 21, R. 92.

fact that in the appeal the preliminary decree was varied cannot be a ground for setting aside a sale to a third party. Further under O 21, R 92(1) the Court is bound to confirm a sale unless there is a successful or effective application under R. 89, 90 or 91 of O. 21. It is quite clear that the proviso to R. 92(2) does not relate to R. 92(1). (*Stone, C. J. and Bose, J*) BIRDI CHAND *v.* GANPATRAO 1938 N L J. 303= A.I.R. 1938 Nag. 525

——O 21, R. 92 (1) and (2)—*Scope of—Auction-purchaser, if can apply for confirmation of sale.*

There is no provision in the Code of Civil Procedure for an application by the auction-purchaser for confirm ation of the sale; confirmation follows automatically under R. 92 (1) and the setting aside follows cally under R. 92 (2) of O. 21. (*Burn and Rao, JJ*) SATYANANDAM *v.* NAMMAYYA. 1938 M.W.N 656=47 A.I.R 1938

——O 21, R. 93—*Execution sale con' application by auction purchaser to be put in possession —Possession not given on account of decree passed in favour of another in regular suit claiming property as his own—Right of auction-purchaser to refund of*

auction purchaser applied to be put in possession of the property and the decree holder in the regular suit put in an application objecting to possession being given to the auction purchaser. It was held purchaser could not be given possess decree in the regular suit and was auction-purchaser could apply for money Accordingly he applied for

Held, that the application for refund could not be made under R. 93 as the sale was not set aside under O. 21, R. 92 and that the auction-purchaser was not entitled as of right to get any refund in execution proceedings (*Almond, J C. and Mir Ahmad, J*)

decree holder can withdraw purchase money before confirmation of sale

O 21, R 93 is intended to arm tde Court with power to order the return of the money to the purchaser in case the same has been paid to any pe It should not be read as containir the decree holder is entitled to w money before confirmation of sale proceedings in the executing (RAMCHANDRA MAHOTRAO *v.* BA. I L R (1938) Nag 10 R N. 205=A I R 1938 Nag 54

——O 21, R 93—*Judgment-debtor having no saleable interest in property sold—Right of purchaser to sue for refund of purchase money.*

Per *B K Mukherjea, J*—A suit for refund of purchase money on the ground that there is no saleable interest of the judgment debtor in the property sold, does not lie at the instance of the auction purchaser The auction purchaser has now got under the C P set aside the sale under O 21, R 91, by an app made within 30 days from the date of sale, be can apply for refund under O. 21, R 93. Where ever the invalidity of the proceeding is due to carelessness, or neglect of duty on the part of the holder, the auction purchaser can sue to recover the

C. P. CODE (1908), O. 21, R. 100.

purchase money on the ground of failure of considera-

——O. 21, R 94—*Sale certificate—Effect of—Property not proclaimed or put up for sale but included in sale certificate—Purchaser's title to.*

A sale certificate is only a formal document confirming what was purchased in the Court auction and cannot confer title on the purchaser to property which was never included in the proclamation of sale or put up for sale, though included in the sale certificate The

ing in the name of third party—Competency.

The law recognizes only the method under which a man can sell his property to another and that is by a registered sale deed There is, however, one exception operation of law. by a person at a The sale certificate that the purchaser got a title and the property vested in him from the date of the sale. The sale certificate will not be a title deed but would be statutory evidence of transfer in place of

transfer or arrangements made by the auction purchaser with a third person (*Rachhpal Singh, J*) MAKHAN LAL *v.* BALDEO PRASAD. 176 I C. 774= 11 R A 147=1938 A W R (H C) 530= 1938 A.L R 681=1938 A L J 625= A.I.R. 1938 All. 471.

Second application by auction- imitation — Starting point—

A second application for delivery of possession under O 21 R 95, C P Code, can be made by the auction-purchaser if it is otherwise within time The period of 30 days under Art 167 of the Limitation Act is to be esistance or obstruction l not from the date of which an application nade and dismissed for RAMA SUNDARI DEVI NI 176 I C 816= 185=42 C W N 478= A I R 1938 Cal 352.

——O 21, Rr 95 to 99 and S 47—*Relative scope of*

O 21, R 95 and the subsequent rules in O 21, relating to delivery of possession to the decree-holder or auction purchaser fall under an order relating to the execution of decrees and orders When a question arises as to the kind of possession to be delivered, it is a

for restoration of possession

C. P. CODE (1908), O. 21, R. 100.

Where an applicant under O. 21, R. 100, C. P. Code, contended that he was in possession in spite of a symbolical delivery and in the alternative prayed that if it was found that he was not in possession, he should be [illegible]

A.I.R. 1938 Nag. 442.

——O. 21, R. 100—*Dispossessed co owner—If can apply under.*

A co owner who is only entitled to joint possession [illegible]

A.I.R 1938 Nag. 442.

——O. 21, R. 100—*Scope—Possession—Person in possession subject to mortgage but not made party to suit* [illegible]

to the mortgage right of the decree holder. (*Dhavle J.*) RAMCHANDRA JHA *v.* PRASAD THAKUR.

174 I C 382 (1)=4 B R. 43?=10 R P 505= A.I [illegible]

——O. 21, R 103—*Applicability—property in execution of money decre*[illegible] *mortgage—Subsequent sale in execu*[illegible] *decree—Purchaser under mortgage* [illegible] *delivery in dispossession of purchaser under money decree Application by latter—Dismissal—Suit for possession on redemption—Limitation.*

A money decree holder purchased his judgment debtor's property which was subject to a mortgage in execution of his decree pending a [illegible] against the judgment debtor mort[illegible] possession. After the sale but befo[illegible] sion, a decree was passed in the m[illegible] execution of the mortgage decree th[illegible] and purchased by the mortgagee who duly obtained delivery of possession. The prior purchaser under the [illegible] 100, C. P. Code, [illegible] ication was dis- [illegible] On 30th July, [illegible] ught a suit claiming, *inter alia*, possession of the property upon redemption of the mortgages on the ground t[illegible]

[illegible] 19 Pat L.T. 781.

——O. 21, R. 103—*Court-fees—Suit under*—Ad valorem *fee—If payable* obiter.

The view that in a suit under O. 21, R. 103, C. P. Code, the plaintiffs would have to pay court-fees on that part of the claim which amounts to a prayer for recovery of possession is erroneous. (*Courtney Terrell,*

C. P. CODE (1908), O. 21, R. 103.

C.J. and Ja[illegible] LAL.

——O. 21, R. 103—*Scope—Purchaser of property in execution of money-decree pending suit for possession of same property—Objection by to delivery of possession in execution of decree for possession in former suit—Claim* [illegible]

session of an estate the respondent's predecessor in-interest sued the person then in possession of that estate for recovery of money for goods sold and delivered [illegible] of which he put up [illegible] purchased it himself [illegible] y obtained a decree [illegible] he attempted to [illegible] the respondent in [illegible] purchased in execution of the money decree. The respondent pleaded that the petitioner himself was a party to the proceedings in execution of his decree and that he was therefore [illegible]

was to bring a suit for possession of the property, in which the question of title and the question of priority of his decree as well as the respondent's title by reason of his purchase in execution might be properly adjudi- [illegible]

10 R P. 303 (1)=18 Pat L.T. 833= A.I R. 1937 Pat. 615.

——O 21, R. 103—*Scope—Suit under—Enquiry—If limited to possession on date of adverse order—Duty of plaintiff.*

It is not correct to hold that in a suit under O. 21, R. 103, C. P. Code, the Court has merely to ascertain [illegible]

—Maintainability without claim for possession. *See* SPECIFIC RELIEF ACT, S. 42, PROVISO.

1938 P.W N. 455.

——O. 21, R 103—Suit under—Prayer for possession—Court fee payable. *See* COURT-FEES ACT, SCH. II, ART. 17.

1938 N.L J. 107.

——O 21, R. 103—*Suit under—Proper parties.*

As it is essential for the plaintiffs in a suit under O. 21, R. 103, C. P. Code, to establish their right not

application should be dismissed and sub-r. (2) is in-

garnishee has been held to exist and an appeal is preferred, it is on account of the special provision in O. 21, R. 139(1). The words refer to those conditions of an appeal as if it were a decree—and one of such conditions of an appeal from a decree for money is the payment of *ad valorem* court fees. (*Bennet, A C.J.*) RAM CHANDRA v. RAM LAL. 175 I C. 310 = 10 R.A. 679 = 1938 A.L.R. 410 = 1938 A W R. (H C) 158 = 1938 A.L.J. 232 =

—— **O. 22**—*Applicability—Dea... dismissal of suit—Right of legal ... appeal.*

The provisions of O. 22, C. P. ... where a party dies after a final decree has been passed. If a plaintiff sues and dies after his suit ... missed, his legal representatives may a... decree without making any application to ... the record in his place. (*Beckett, J.*) ... v. CHANDGI. 4

—— **O. 22, R. 3**—*Appeal by deity—Abatement against one of shebaits—Appeal, if competent.*

Per *Jack, J.*—An appeal by a deity is not incompetent merely by reason of its being allowed to abate as against the heirs of one of the shebaits who died pending the appeal (*Jack and Khundkar, JJ*) LAKSHMI NARAYAN JIE v. JAGADISH CH SUR. 42 C W N 837 = 177 I C 477 = 11 R C 247 = A I R 1938 Cal 541.

—— **O. 22, Rr 3 and 8**—*Suit by daughter for posses...*

K brought a suit for possession of certain properties as constituting the estate of her deceased father. The

meet the costs.

Held, that thi...

perty of the insolvent petitioner, and though the petitioner might maintain a suit to recover the after-acquired property in the hands of a stranger unless the receiver

tinue the appeal as a legal representative in the strict ... his deceased ... *Pandrang* NAGAYYA ... Mad 420 = ... R M 773 = ... L W. 363 = ... 413 (F.B.).

...*eal—Decree common to all defendants respondents—Abatement of appeal against one of them—Abatement* in toto

Although the decree appealed against is common to all the defendants against whom the suit was dismissed, the abatement of appeal against one of the defendants-respondents does not have the effect of the abatement of the entire appeal if the interest of that defendant is quite distinct and separate from that of the

—— **O. 22, R 4**—*Abatement of appeal—Legal repre-*

—— **O. 22, R. 4**—Applicability—One of the impleaded non appealing plaintiffs and a *pro forma* defendant dying—Legal ... Appeal if abate... CABILITY.

—— **O 22, R** ... *presentatives against him.*

The failure to implead all the legal representatives of a deceased defendant does not cause the suit to abate as

KHAN v MAJID. ... 10 R Pesh 46 = A.I.R. 1938 Pesh. 4.

—— **O. 22, Rr. 4 and 12**—*Legal representative judgment-debtor not brought on record—Execution proceedings—If a nullity.*

C. P CODE (1908), O. 22, R. 4.

The failure to bring the legal representative of the judgment debtor on record does not necessarily make the proceedings a nullity. (*Pollock, J.*) MST. GOMTI *v.* SOCIETY GHAT PINDARAI. **1938 N.L J. 166 = A.I R 1938 Nag. 308.**

——**O. 22, R. 4**—*Legal representatives of one of defendants not impleaded in appeal—Abatement of appeal in toto—Test*

If a decree is made jointly in favour of all the defendants, and their interests *inter se* are neither separate nor separable, it may lead to two conflicting decrees, if an appeal is allowed in the absence of some of the defendants in whose favour the original decree stands. In cases like these therefore, the non inclusion of some of the defendants as respondents must naturally result in the failure of the whole appeal. But where t...

were brought on record The suit was dismissed In appeal from such decree, instead of impleading these legal representatives as respondents, the name of the deceased defendant was mentioned. The appellant ...

being disturbed *qua* his own share of the property and relief was claimed against him to that limite... only The appeal, in these circumstances, ... abate as a whole merely by the omission to im... legal representatives of the deceased defendant as respondents. The appeal therefore could proceed against those defendants that were impleaded as respondents. (*Addison and Din Mohammad, JJ*) HAYAT *v.* MUTALLI. **18 Lah 746 = 40 P.L R. 273 = 175 I C. 819 = 11 R L 67 = A I R 1938 Lah 35.**

——**O. 22, R. 4 (3)**—*Appeal—Death of one respondent—Legal representative not brought on record—Effect*

Where during the pendency of an appeal from a ...

10 R N. 266—A I R. 1938 Nag 42

against some persons upon a mortgage executed by them.

C. P. CODE (1908), O. 22, R. 9.

The defendants thereupon appealed. During the pendency of the appeal one of the plaintiff-respondents died and no attempt was made to bring his legal representatives on record.

Held, that because of the abatement with respect to the deceased respondent, the whole appeal abated. (*Stone, C.J. and Bose, J.*) GHANARAM *v.* BALBHADRA SAI. **I L R. (1938) Nag. 370 = 173 I C. 44 = 10 R N. 266 = A I.R. 1938 Nag. 42**

——**O. 22, R. 4 (3)**—*Suit for partition against brothers—Appeal against order passed in execution—Death of one brother pending appeal—Effect—If whole appeal abates.*

A suit for partition and proceeding in execution of such a suit must proceed against all the co-sharers and ...

appealed against was passed (*Davis, J.C. and Mehta, J.*) MT. AMAN KHATUN *v.* ABDUL RASOOL **A.I.R. 1938 Sind 239.**

——**O 22, R 5**—Duty of Court—Rival claimants—

...e, which he has for a ..., then the law as to ... liberally in his favour ... *M*) RAJ BAHADUR *v* ADMINISTRATOR GENERAL OF THE ESTATE OF C.J. BARBAR **1938 R D. 431 = 1938 A.W R (B R) 305 = 1938 A.L J (Supp) 128**

——**O 22, R. 9**—Appeal—Suit in High Court—Abatement—Order setting aside—Appealability—"Judgment." *See* LETTERS PATENT (BOM), CL 15 **40 Bom. L R 658**

——**O 22. R 9 (2)**—*"Sufficient cause"—Meaning of—Death of defendant—Delay in applying to set aside abatement—Ignorance of legal representatives—Sufficiency.*

B J. Wadia, J.—Under O 22, R. 9 (2), C. P. Code, read with S. 5 of the Limitation Act, the Court has a discretion to excuse delay. In exercising the discretion, which must be judicially exercised, the Court should construe the words "sufficient cause" liberally, having regard to the facts and circumstances of the case. ... ntatives of a deceased ... foreign place may be a ... y in seeking to set aside ... ar negligence or care... or unnecessary delay. (*Beaumont, C.J. and ... J*) M. F. ALMEIDA *v.* RAMCHANDRA RAM ASAVLE, **I L R. (1938) Bom 704 = 177 I C 734 = 11 R B. 119 = 40 Bom L R. 658 = A I R 1938 Bom 408.**

——**O 22, R 9 (2)**—*Sufficient cause—Appeal—Ignor... death of respondent—If ground for setting aside of abatement of appeal—Duty of appellant to be diligent.*

C. P. CODE (1908), O. 22, R. 9.

Ignorance on the part of an appellant of the death of the respondent to the appeal is a sufficient cause within the meaning of O. 22, R. 9, C. P. Code. The appellant is no doubt required to be diligen appeal, but when he has succeeded of appeal served on the responde he must be taken to have done all t! him in connection with the appeal. The appellant can not reasonably be expected and is not required to inquire

——O. 22, R. 9 (2)—*"Sufficient cause"—"Ignorance of death of respondent"—If ground for setting aside abatement—Limitation Act, S. 5.*

the

appellant therefore does not become aware of the death of the respondent for a long time after the death, and

——O. 22, R. 10—*Applicability—Final decree passed in suit—Discretion of Court.*

Per *Costello, J.*—O. 22, R. 10, C. apply before a final decree or order made in the suit.

Per *Derbyshire, C. J.*—Under O 22, R. 10, C. P.

——O. 22, R 10—*Person putting forward adverse claim—If can come in.*

C. P. CODE (1908) O. 23, R. 1.

(1938) M.W.N. 516=A I.R. 1938 Mad. 757= (1938) 1 M L J 882.

——O. 22, R 10—*Suit against Municipality— nt and adminis- ce—Administra- against Muni-*

A suit was brought against a Municipality to recover certain amount. Before the decree was passed the Municipality was superseded by the Government and an either the administrator ive of the Municipality lecree was subsequently ied to execute it against administrator. Administrator raised an objection.

Held, that the decree was a nullity as the legal representative of the Municipality was not brought on record

18 Pat L T. 1014.

——O. 22, R. 11—Scope and applicability—If applies to appeals under S. 47, C. P. Code. *See* C. P. CODE, S. 50 AND O. 22, RR. 11 AND 12 1938 N.L J. 312.

——O 22, R. 12—*Applicability—Appeal from order*

——O. 22, R. 12—*Scope and effect—Execution proceedings, if abate—Procedure to be followed in case of decree holder's death.*

Abatement does not apply to execution proceedings. The result of that is, however, that the heirs need not O. 22, R. 3, but may or may file a fresh Bose, J) TEJRAJ v. 1938 N L J. 99= A.I R. 1938 Nag. 528.

——O 23, R. 1—Applicability—Appeal—Withdrawn—Right of appellant—Power of Court to grant leave to withdraw. *See* C. P. CODE, S. 107 AND O. 23, R 1. 40 Bom L R 895.

——O 23, R 1—*Leave to withdraw—Duty of Court—Procedure*

Where a person applies for permission to withdraw

... concludes the ... it cannot ... is with- ... On the dismissal of the appeal, the suit automatically is dismissed and the Court ceases to have any further jurisdiction in the matter and it ceases to have any power to grant permission to the plaintiff to institute a fresh suit on the same cause of action. A ... the plaintiff on the basis ... principles of *res judicata*. (... *mad, JJ.*) SHAHU *v.* MT. ... 178 I C. ...

——O. 23, R 1—*Scope—* ... *—Reference to arbitration pending—Power to permit withdrawal of suit.*

Once a suit has been referred to arbitration, so long as that reference stands, the Court which has made the reference has no power to pass any order which in any way would affect the subject-matter of the suit. The Court has consequently no jurisdiction after the suit has been referred to arbitration and as long as the reference ...

——O. 23, R 1—*Scope—Express application for* ... *them—If can be granted.*

Where a suit in which some of the defendants are minors is referred to arbitration without the leave of the Court and the arbitrators give an award, the Court has no jurisdiction to allow the suit to be withdrawn against ...

——O. 23, R. 1—*Withdrawal* ... *ment of costs as condition precede* ... *such payment—Costs paid subseq* ... *suit—Maintainability of suit.*

... for such payment, the non-payment of costs does not render a fresh suit bad *ab initio* and the payment of

The costs were paid with the permission of the Court, before the commencement of the hearing of the fresh suit on an objection as to maintainability of the fresh suit.

Held, that whether the condition as to payment of costs attaches to the permission to withdraw or to file a fresh suit, the Court extended the time under S. 148, C.P. Code, for payment of the costs. Even if the condition ...

——O. 23, R. 1 (2) (a) and (b)—*Scope of—Leave to withdraw—When could be granted.*

The two sub-Cls. (*a*) and (*b*) of sub-R. (2) of R. 1 of O. 23, C. P. Code, are worded in an entirely different manner and they are intended to cover different circumstances. Cl (*b*) is not limited to cases in which the Court thinks that the suit must necessarily fail. There may be other sufficient grounds on which it ... the plaintiff to withdraw his suit. ... DAW DWE *v.* U SAN HLA. ... g L R. 270=A.I.R. 1938 Rang. 389.

... 1 (2) (b)—*"Other sufficient grounds"*

The "other sufficient grounds" in Cl. (2) (*b*) of R. 1 ... *generis* with the ... *Tek Chand, J.*) ... 39 P.L R. 1010.

... *"Subject matter"* ... *gagee of tenant* ... *tenant turning up—Subsequent suit on surrender by tenant—If barred.*

The bar in O. 23, R. 1 (3) is in respect of the subject-matter and not the cause of action, subject matter means the series of acts and transactions alleged to exist giving rise to the relief claimed. A surrender by a tenant of his holding is a clearly different from his death. On ... the prior suit based on his ... *S.M. and Bomford, J.M.*) BALGOVIND *v.* SATNARAIN LAL 1938 R D. 174=1938 A L J. (Supp) 2= 1938 A.W.R (B R.) 93.

Held that the subsequent suit of *A* was not barred by O. 23, R. 1 (3) (*Mackney, J.*) MA PAN BU *v.* MAUNG LU THANT. 177 I C 211 = 11 R R 103 = A I.R. 1938 Rang 210

——O. 23, R. 2—*Applicability—Suit in High Court—Plea by defendants of being agriculturists—Plaintiff withdrawing suit with liberty—Subsequent suit in mofussal Court—Right to deduct period of prior suit—Limitation Act, S. 14—Applicability.*

The C. P. Code and the Limitation Act are rules of procedure and must be interpreted strictly. A plaintiff who prays for an order for withdrawal of his suit with leave of the Court under O. 23, R. 1, C. P. Code, must face R. 2 of O. 23, and cannot have the benefit of S 14 of the Limitation Act In a suit under the High Court the defendant pleadedthat they were agriculturists. The plaintiff applied for leave to withdraw the suit under O 23, R. 1 with liberty to file a fresh suit, and the Court granted the same Subsequer... filed a suit in a Subordinate Court in th... claimed the right to deduct the period was prosecuting the first suit, under S Act

Held, that the High Court in the prior suit had jurisdiction to decide the plea raised by the defendant as to their status and that the case fell under O 23, R. 2, C. P Code, but not under S. 14 of the Limitation Act, and the plaintiff could not therefore avail himself of the benefit of S 14, Limitation Act ... *JJ.*) ACHUT DADAJI JOSHI *v.* ... DEV. I.L.R. (1938) Bom 32 175 I C 528 = 10 R B 565 = ...

——O. 23 R. 3—*Adjustmen... by statement of plaintiff—Statem... of.*

Where a defendant offers to bind himself by the statement of the plaintiff and the plaintiff makes the statement, it follows th... claim against the ... down by him has b... plaintiff has to be ... claim and a decre... NARAIN DAS *v.* GH... 1938 A L ... 176 I C 99 = 1938 A L R 543 = 11 R A 40 = A I R 1938 All 353

——O 23, R 3—*Matter 'relating to suit'—Meaning of*

Where a widow who was a party to a partition suit was held by mutual agreement entitled to maintenance from a date prior to the date of the suit, a provision in ...

173 I C 980 = 10 R O 248 = 1938 O L R 154 = 1938 O W N 348 = 1938 O A 240 = A I R 1938 Oudh 103

——O. 23, R. 3 and Sch II, Para 20—*Power to adjust disputes by compromise—If affected by para. 20, Sch. II, C.P Code.*

...

this agreement which the Court has power under O ... R. 3 to record and pass a decree in terms thereof In

principle there is no difference between an agreement of the parties and an award by arbitrators who are appointed by the parties themselves to settle their dispute, because in either case the parties are bound by their own agreement. An award therefore assumes the character of an agreement as soon as it is delivered whether the parties accept it or not. (*Niyogi, J.*) RAMDHAR RAM *v.* SANTADAR. 178 I.C. 29 = A.I R. 1938 Nag 492.

——O. 25, R. 1—Applicability—Revision application—Security for costs—Power to make *See* C. P. CODE, S. 151. 40 Bom.L R. 1025.

——O. 25, R. 1—*Discretion of Court.*

The power given to the Court under O. 25, R. 1, C.P Code, is discretionary, and in deciding whether to exercise that power, the Court must have regard to the circumstances of each case, and unless it be shown that an order for security is necessary for the protection of ...

——O 26—*Reference to Commissioner of issue as to whether account is mutual, open and current—Legality.*

It is not open to a Court to refer for decision to a Commissioner for accounts, an issue as to whether there was a mutual, open and current account between the parties. Such procedure is unauthorized by O. 26. All ...

HARGOVIND MOHANLAL. 177 I C 442 = 11 R R 129 = A I.R. 1938 Rang 270.

——O 26, Rr 4 and 5—*Duty of Court—Witnesses ... tate—Application for ... Propriety—Revision*

... of a commission to ... residing in Bangalore ... within the ambit of ... R 4 has no application to such a case If the Court thinks that the evidence of those witnesses is necessary, it has no further discretion in the matter, it must order the commission to issue as a matter of course If the Court in such a case refuses to ... under S. 115, ... revision. (*Ab...*

... *and effect of—Absence of—Consent of parties, if can ... ble*

In the case of consent of the parties, it would not be necessary that the conditions and limitations prescribed in R 1 of O 26 should exist. It will appear from R 8 of O 26, that with the consent of the parties, the evidence of a person in cases where the conditions and ...

Consent of party, if necessary

. Where the witness who is examined on commission, is beyond the jurisdiction of the Court, the consent of the party is not necessary to make it ad
a party objects, it is of no use. (*Bo*
v. KUNJILAL. 1
A.I F

——O. 26, R. 9 and S. 99—*Issue of commission—Notice to parties—Rules as to—Failure to give notice—Effect.*

O 26, R. 9 does not provide for the presence of the parties when a commission is issued and merely leaves

Court to issue successive commissions—Previous Commissioner's report—If to be wiped out and treated as not evidence before sending out another commission.

It is in the power of the trial Court, when it i satisfied with the report of the first Commissione

at the
or no
is not
necessary that before issuing a second or third commission, the Court should wipe the previous Commissioner's report off the record, and treat it as not being evidence at all. There is nothing in O. 26, R. 10, C. P. Code, to justify such a contention. (*Courtney Terrell, C.J. and Manohar Lall, J.*) SHIB CHARAN SAHU v. SARDA PRASAD. 172 I C 751=4 B R. 164=10 R.P. 311=18 Pat L T. 837=1937 P.W.N. 862=A.I.R. 1937 Pat. 670.

——O. 26, R. 15—*Commissioner's costs—Order for—If can be made part of decree.*

because a sum sufficient to cover the commissioner's expenses ought to be deposited in the Court before the commission is taken. (*Mosely and Dunkley, JJ.*) OON CHAN v. KHOO ZUN. 177 I C. 501=11 R R. 134=A.I R. 1938 Rang 254.

——O. 26, Rr. 16 and 17—*Scope of—Examination of witnesses, secretly and in the absence of parties—If permissible.*

——O. 30—*Applicability—Joint Hindu family firm.*

There is no rule of law which lays down that a suit

regulated by the Contract Act. Such a firm must sue and be sued in the name of its members. (*Tek Chand, J.*) DEBI SAHAI v. GILLU MALL. 40 P L R 456=177 I.C 918=A I R. 1938 Lah 563

——O. 30, R. 1—*Applicability to business of joint*

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Effect of.

When a suit is brought against a firm and judgment

PAL. 42 C W.N. 310=177 I.C. 812=11 R C. 277=A.I R. 1938 Cal. 316.

——O. 30, R. 1—*Suit against firm—Addition of names of partners—If obligatory.*

In cases of suits by or against firms properly represented, the addition of the names of individual partners is not obligatory and the suit can proceed even in the absence of the partner's names. (*Din Mohammad, J.*) CHANDU LAL v SARASWATI SUGAR SYNDICATE. A I.R. 1938 Lah. 823.

——O. 30, R 3, Proviso—*Suit against firm—Plaintiff having notice of dissolution—Decree obtained after service on one partner only—Validity and effect.*

A decree obtained against a firm after service of

him personally. (*Ameer Ali, J.*) SATYA CHARAN v. CALCUTTA HARDWARE ENGINEERING CO. 42 C.W.N. 820.

——O. 30, R. 4—*Scope—Surviving partner of firm—Suit by—Non-joinder of legal representatives of deceased partners—If fatal—Dismissal of suit—Propriety.*

The surviving partner of a firm is entitled to maintain a suit under O. 30, R 4, C. P. Code, without joining as

ter to defend.

an ordinary suit against the firm, each partner has
ght to come in and defend. He has an individual
to come in and defend although he defends on
lf of the firm. Each partner may file separate
ces, one partner may defend, while another admits.
gh not clearly stated this is involved in O. 30,

R. 6. C.P. Code. (*Ameer Ali, J*) SATYA CHARAN *v.* CALCUTTA HARDWARE ENGINEERING CO.
42 C.W N. 820

——O 30. R 6—*Warrant of Attorney by one partner for appearance—Appearance if on behalf of firm.*

Under O. 30, R. 6, C. P Code, after appearance all steps in the suit must be in the name of the firm. Though the appearance in such circumstances is individual by each partner, that appearance is an appearance on behalf of the firm. Hen... attorney is given by one partner ... his behalf, the warrant of attorne... be on behalf of the firm. (*Lort ... JJ.*) GHISULAL GANESHILAL ...

——O 32, R. 1—Suit on beh... Plaintiff found to be major—Proc... *See* C. P. CODE, S 47 AND O 3...
1938 O A 61

——O 32, R 3—*Appointment of guardian* ad litem—*Effect—Allegations that minors were in fact majors—Onus*

Where a suit is instituted against certain persons on the footing that they were minors the Court, by appoint-

CHETTYAR FIRM *v.* MG. SHWE HMUN.
A.I R 1938 Rang 468.

——O 32, R 3—*Duty of Court—Minors served through mothers as guardians—No express order of appointment or consent of guardians—Proposed guardians not appearing in proceedings—Decree against minors—If null and void.*

Where the defendant in a suit is a minor that Court has to see not merely that a guardian is appointed, but also that the guardian has consented to act. Where notices are served on minor defendants through their

——O 32, R 3—*Guardian* ad litem—*Absence of formal order appointing him—Validity of proceedings*

Where a person acts as the *de facto* guardian *ad litem* of a minor defendant, the mere absence of an order formally appointing him as guardian *ad litem* is

litem

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the

that they were not properly represented in the suit. (*Dunkley and Braund, JJ.*) R M.A R M. CHETTYAR FIRM *v.* MG. SHWE HMUN.
A I R 1938 Rang 468.

——O. 32, R. 4 (1)—*"Adverse to that of the minor"—Mortgage by Hindu father—Suit on impleading minor son—Father appointed guardian* ad litem—*Propriety—Father's interests—If adverse to those of minor son.*

It cannot be st...

5 B R 37 = 11 R P. 191 = A I.R. 1938 Pat 437.

——O. 32, R 5—*Representation of minor—Appointment of guardian* ad litem—*Mother, if can act there after.*

the guardian *ad litem* it is not entertainable. (*Bennet and Verma, JJ*) HEM RAJ *v* KHEMCHAND
I L.R (1938) All 829 = 1938 A L R 855 = 178 I C 449 = 1938 A W R (H C) 657 = 1938 A L J 919 = A I R 1938 All. 601.

——O 32, R 5—*Scope—If mandatory—Order at instance of minor without next friend or guardian but beneficial to minor—Court—If bound to set aside*

O 32, R. 5, C. P Code was made for the benefit and protection of a minor and not for his prejudice.

Quaere.—Whether R 5 of O 32 compels the Court

S. 36, *U P Land Revenue Act*

The provisions of O 32, R. 7, C. P. Code, must presumably be held to apply to proceedings under S. 36 of the U P Land Revenue Act in view of S 264 of the Agra Tenancy Act (*Bennet, J*) SUCHIT CHAUBE *v.* ... 1181 = 1937 A L J 1284 = ... C 425 = 1938 A L R 137 = ... 482 = A I.R 1938 All. 74.

...*stration—Reference without*

some of the defendants are

avoiding the procee... ...rators is liable to be (*Tek Chand, J* ... 40 P L R 49 ... R 1938 Lah

C. P. CODE (1908), O. 33, R. 5.

SUDAMA KUER. 175 I.C. 505=4 B R. 598= .10 R.P. 632=19 Pat.L.T. 101=1938 ...

——**O 33, R. 5 (b) and (c)**—
under—Burden of proof.

Where opposite party opposes the application on any ...

(*Venkatasubba Rao and Abdur Rahman, JJ.*) KAYAMBU PILLAI *v.* LAKSHMI AMMANI AMMAL.
178 I C 514=1938 M.W N. 322=47 L W. 405= A I R. 1938 Mad. 491=(1938) 2 M.L J 137.

——**O. 33, R. 7**—*Objection under R. 5—Power of Court to deal with.*

Court has under O. 33, R. 7 power to dismiss the application either because on the evidence produced it is not satisfied that the petitioner is a pauper or because ...

... 10 R. Pesh. 20=A I.R 1938 Pesh 50

——**O. 33, R. 9 (c)**—*Construction—"Plaintiff"—Meaning—If includes his representative in interest—Representative —... predecessor-in int...*

The word "pla... places in which ...

... Government is entitled to obtain such an order by making an application under O. 33, R. 12. Such an

C. P. CODE (1908), O. 34, R. 1.

application is competent and the Government's right to ...

A I.R. 1938 Cal. 776.

——**O. 34, R. 1**—*Attaching creditor—If necessary party.*

Per *Nasim Ali, J.*—An attaching creditor is a necessary party to a mortgage suit. (*S K. Ghose and Nasim Ali, JJ.*) KARNANI INDUSTRIAL BANK, LTD *v.* BARABANI COAL CONCERN, LTD 42 C W N. 523= A I R 1938 Cal. 471.

——**O. 34, R. 1**—*Attaching creditors—Proper but not necessary parties—Lower Court striking out their names—Attaching creditors bringing the property to sale and ... ers subsequently—Effect—Application ... gh Court in revision—Right to relief.*

... ht by the plaintiff on his mortgage, ... titioners, who had obtained a money ... defendants prior to the date of the mortgage and attached the mortgaged properties. When the suit came for trial, the Court directed the names of the petitioners to be struck out as they were unnecessary parties and asserted a paramount claim and raised ... late of the ... petitioners ... in execu- ... so became ...

... High Court, taking notice of the altered circumstances, declined to give to the petitioners that relief to which

C. P. CODE (1908), O. 34, R. 1.

they by their own act in bringing the property to sale before filing revision petition to the High Court disentitled themselves (*Pandrang Row and Venkataramana Rao, JJ*)
VASARAGHAVA AI...

——**O. 34, R.** ...
creditor, if one—Mortgaged property purchased by attaching creditor in execution of his money decree—Mortgage decree in the meanwhile—Rights of parties—Attaching creditor, purchaser, if a representative of the mortgagor.

An attaching creditor is not a necessary party to a suit on a mortgage in respect of the property attached But where an attaching creditor has purchased the mortgaged property in execution of his own money decree, and a decree on the mortgage also had in the meanwhile been obtained, the rights of the purchaser

... mortgage decree ... OF SIMLA *v* F B POWELL

1938 A W.R. (H C) 662=
1938 A.L J. 1024=A I R 1938 All 651.

——**O 34, R. 1**—*Non joinder—Omission to implead purchaser of part of equity of redemption—Purchaser at execution sale—Rights of.*

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redemption which includes the right to possess the mortgaged prop... not transferred
to satisfy his d
the mortgaged
if, in fact, he se
set aside, because the mortgagor had no property to sell, the mortgagor's lien cannot pass to the purchaser. In spite of the sale it remains in th
however the mortgagee sells sor
it fails to be effectual in every c
an assignment of the mortgage to the purchaser and he can use it for his own protection But the purchaser cannot compel a purchaser of a part of the equity of

A I R 1938 Cal 624

——**O 34, R 1**—*Person having an interest—Attach*

C. P. CODE (1908), O. 34, R. 5

MARWARI *v.* THAKUR PRASAD MARWARI
19 Pat.L T. 781=1938 P.W N. 836.

——**O 34, R 1**—Scope—Mortgaged property attached, after mortgage
enforce mortgage
88, Cr. P. Code—
See CR. P CODE,
S. 88 18 Pat L T. 814.

——**O. 34, R. 3 (4) (Rangoon High Court)**—*Cause of action for personal remedy—When accrues—Suit on mortgage by deposit of title deeds filed more than three years after date of promissory note—Fresh note executed after three years—Mortgagee's right to personal decree—Limitation Act, S 19—Contract Act, S. 25 (3).*

There is only one cause of action on a mortgage giving rise both to a relief by way of final decree for sale and also to an additional remedy by way of a personal decree for the balance. There is no separate cause of action
the mortgaged
to satisfy the
der O. 34, R. 3 (4), C P. Code, as amended by the Rangoon High Court, cannot be obtained when at the date of filing of the suit the personal remedy in the mortgage suit is barred. Where, therefore, a suit on a mortgage by deposit of title deeds is filed more than three years after the date of the promissory note given by the mortgagor for the amount of the mortgage debt, the personal

does give rise to a new one. The failure of the mort...
the new promissory note
his cause of action for a
C.J. and Sharpe, J.)
1938 Rang L R 6=
=A.I R. 1938 Rang 134

——**O. 34, R 3 (4) (Rang.)**—*Personal decree if can*
ortgaged property
a valuation in
can be passed
without sale of the mortgaged property for the balance (*Baguley and Mosely, JJ*) V N A FIRM *v* BANK OF CHETTINAD, LTD A I R 1938 Rang 353.

Act as amended by the Amendment Act of 1929, two remedies can alternatively be given in the case of an

cation of
e priority

principal
te against
stipulating

C. P. CODE (1908), O. 39, R. 1.

... to prevent abuse of the process of the Court. (*Mya Bu and Mackney, JJ*) MOHAMMAD HAJEE *v.* VEDNATH SINGH 174 I C. 503 = 10 R R 411 = A I.R 1938 Rang. 21.

——O. 39, R 1—*Suit by unsuccessful claimant under O. 21, R 63—Temporary injunction restraining execution sale—Power of Court to grant.*

In a suit filed by an unsuccessful claimant under O. 21, R. 63, C. P. Code, the Court has power to grant a temporary injunction under O. 39, R. 1, C P. Code, restraining the decree holder from selling the property, which is the subject matter of the suit, in execution of his decree. The principle underlying O. 39, R. 1 is to prevent multiplicity of judicial proceedings, and in each case the Court will have to consider whether there is a danger of the property being ... of the decree. ... claim case is ... frivolous one or ... is an abuse of ... Court. (*Bartley and Nasim Ali, JJ*) BHAKAT *v.* HEERALAL AGARWALLA & ... 42 C W N 409 = A I.R ...

——O. 39, R 1—*Temporary injuncti... in contravention of—If a nullity*

A temporary injunction under the pr... 1, O. 39 is not a stay order issued by a ... to stay execution proceedings under any ... Code authorizing such an order. The ... compliance with an injunction issued un... is to make the offender liable to the punishment ... scribed in C... vention of ... nullity as b... junction un... Court, as is ... Procedure C... cular pers... stances de... CHAND *v.* SOHAN LAL ... 40 I L R. 618 = A.I.R. 1938 Lah. 220

——O. 39, R. 1—*Temporary injunction—When may be granted.*

The power of a Court is very wide with respect to the issue of a temporary injunction and the injunction can ... the satisfaction ... te in the suit is ... n of a ... There is no restriction in O. 39, R. 1 that ... should be for the issue of a perpetual injuncti... temporary injunction is to be granted. (*Mir ... J.*) MT TAJBARO ...

——O. 39, R ...

Meaning of—Sa... entitled to execute same—Injunction to restrain—If can issue.

...

C. P. CODE (1908), O. 40, R. 1.

... as amended in 1937), Proviso—If adds to the law under Specific ... ECIFIC RELIEF ACT, S. 56 (*b*). 1938 P.W.N. 220.

... *Applicability—Application for leave ... "suit"—Application for appointment of commissioner to take inventory—Maintainability.*

An application for leave to institute a suit in *forma pauperis* is a suit for purposes of O. 39, R. 7, C. P. Code, and the parties in a contemplated pauper suit who have petitioned to have their suit admitted under O. 33, C. P Code, are therefore entitled to the relief of appointment of a commissioner or receiver for the purpose of taking an inventory of properties. (*Gentle, J.*) CHIDAMBARAM *v* NATARAJA MUDALIAR 48 L W. 688 = 1938 M W.N 1254.

——O 39, R 9—Possession given under—Nature and effect of—If conclusive in proceedings in Criminal Court. *See* CR. P. CODE, SS. 107 AND 145. 1938 P W N. 526.

——O 40 R 1 and O 43 R 1 (S)—*Appeal—Ap... — Form—Proper* ... the appointment ...

——O 40 R 1—Appeal—Appointed receiver refusing to act—Appeal against appointment—If lies. *See* C. P. CODE, O. 43, R. 1, CL. (S) A I R. 1938 Lah. 10.

——O. 40, R 1 and O. 43, R 1 (*s*)—*Appeal—Order dismissing application for removal of receiver—If appealable*

In view of S. 16 of the Burma General Clauses Act, O. 40, R. 1 must be regarded as ... ... and a right of appeal is given by O. 43, R. ... orders passed under O. 40, R. 1. ..., *JJ.*) ABDUL KADER *v.* R. M. ... 1938 Rang L.R. 586 = A I.R. 1938 Rang. 387.

——O. 40, Rr. 1, 4—*Applicability—Accounts by third* ...

C. P. CODE (1908), O. 40, R. 1.

——O. 40, R. 1—*Construction—Just and*

The words 'just and convenient' in O. 4
strued according to the ordinary rules do n
appointment of a receiver to property ove
plaintiff has a lien. Receiver can be appointed if the appointment is in fact just and convenient. (*Skemp, J.*) HARI RAM v. FIRM MADDU MAL.

177 I.C 612=11 R L 338=A.I R 1938 Lah. 12.

——O. 40, R. 1—*English mortgage—Receiver, if can be appointed in execution.*

In the case of English mortgages, a receiver can be appointed of the mortgaged property in execution in cases where sub R. (2) of O 40, R. 1, C. P. Code, would operate to prevent such an appointment. (*Panckridge, J.*) SM. RENUKA BOSE, *In re.*

175 I.C. 908=11 R C. 11=42 C.W N 266=A I R. 1938 Cal 93

——O. 40, R. 1—*Grounds for appointment of receiver—Prima facie case—Defendants in possession—Absence of even allegation as to waste*

The power conferred by O. 40, R. 1, C. P. Code should be exercised cautiously and only in cases where

1938 O W.N. 1153=1938 O A. 938.

——O 40, R
perty—Receiver
—C. P Code, S

The Court un
cretion to appoir
and convenient
the property in question is dedicated property, being *wakf* property, which under the terms of the *wakf* deed has to be managed by a trustee enjoined to perform certain religious duties as trustee, it would not be just and convenient to appoint a receiver of such property No receiver of such property can therefore be appointed in execution of a simple money decree, as the property

——O 40, R 1—*Mortgage decree—Appointment of receiver in*

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mortgage d
make the
difficulty
mortgagee

C. P. CODE (1908), O. 40, R. 1.

receiver in execution of
point to some actual
and not merely to a
l grounds. It cannot be supposed that when a substantial portion of the mortgage securities is outside the local limits of the jurisdiction of the Original Side, the mortgagee can almost as of righ
in execution wh
are slow to enco
BOSE, *In re.*

——O 40, R. 1—*Mortgage suit—Simple mortgage—Suit for sale—Receiver, if can be appointed.*

Under O. 40, R. 1 a receiver cannot be appointed in a suit for sale on a simple mortgage before a preliminary decree has been passed. (*Weston.*) NANDA v. KANHAIYA LAL. 1938 A.M L.J. 90.

——O 40, Rr. 1 and 2 and S. 11—*Mortgage suit—Simple mortgage—Whether receiver could be appointed—Original order of Court allowing mortgagor to be in a*

that the appointment of a receiver in a simple mortgage suit was wrong

Held further, that the Courts allowing by its original order the mortgagor to be in possession of the property could not be barring the later order to vacate by any principle of constructive *res judicata*. The Court certainly did not decide any question against the mortgagee either expressly or by implication which would amount

——O 40, R. 1—*Mortgage suit—Suit on simple mortgage—Appointment of Receiver.*

It is settled law that in the case of a simple mortgage without possession the intention of the parties is that

suit. (*Skemp, J.*) MANOHAR LAL *v.* KISHAN LAL
176 I C. 919=11 R L. 249=
A.I R. 1938 Lah. 10

——O 40, R 1—*Partition suit—Receiver—Appointment of—Justification*

In a suit by a minor for partition of the family properties, *it was found that he was entitled to a half share* in the properties, that the quarrels in the family and the conduct of the defendant made it impossible for the plaintiff to get his fair share of the harvest and it also appeared that so long as the properties remained with the defendant the plaintiff would not be able to secure his fair share of the income. The lower Court

The proper remedy of the lessee for breach of contract of lease entered into by the Receiver is only against the Receiver personally and the lessee has no right of suit against the owner of the estate. The
to be indemnified from the estate if it
action in leasing the property was corre
REV. BROTHER PATRICK *v* LYAN H
1938 Rang.

——O. 40, R. 1—*Receiver—Appointment—Effect—Property in possession of receiver—Suit*
of—Sanction of Court—Necessity.

Where an estate is in the possession
appointed by Court, a suit for possession
from that receiver can only be brought wit
Court. It is necessary for the plaintiff to apply to the Court which has appointed the receiver for sanction for

to take possession, or a right to bring an action, or a

——O. 40, R. 1—*Receiver—Grounds for appointment—Courts of concurrent jurisdiction—Separate appointments by—Undesirability of.*

It is obviously undesirable that receiver should be appointed by two Courts of concurrent jurisdiction, so that orders may be given possibly by one Court which may conflict with the orders that are given in the other Court. Where there is a receiver already appointed, the proper procedure for protection of one's interest is not to apply to another Court of concurrent jurisdiction for the appointment of another receiver, but to apply to the Court which has already appointed a receiver for adequate protection. (*McNair, J.*) ANANDINATH MUKHERJEE *v.* SHIBCHARAN TRIGUNAIT.
42 C.W.N. 33.

——O. 40, R 1—*Receiver—Position of—If legal representative of party—Estate including decree to be executed—Execution—Procedure for execution of decree by receiver.*

Receivers appointed by the Court are officers of the Court, and are not the legal representatives or assigns of the parties to the suit; *nor is it the practice of the Court* to bring receivers on the record in a suit and subject them to liability as to costs Where an estate of which a receiver has been appointed includes a decree to be executed, the proper procedure is for the receiver to apply in the suit in which he was appointed (unless it already has the power) for liberty either to file a fresh darkhast in his own name for execution or to continue the existing darkhast (when one has been filed and is pending) in the name of the darkhastdar on giving him a proper indemnity as to costs. (*Beaumont, C.J. and Wasoodew, J*) HANMANT *v* JAINAPUR.
178 I.C. 395=40 Bom L.R. 932=
A.I R. 1938 Bom 458

1 (2)—*Removal of receiver—Defen-*
m of property struck off—If entitled
eceiver.

Where two sets of defendants are joined in a suit on a mortgage and the mortgagee gets a receiver appointed to take charge of certain land covered by the mortgage, but subsequently one set of defendants are struck off

order prayed for, if it is found that they were in possession of the land at the time the receiver was appointed

205—*Receiver's fees—Powers of Court.*

Official Receiver, in making his lists, should consider

——O. 41, R. 1—*Appeal filed with copy of original*

judgment is
the original
have been
it is doubt-
art from the
extent, and
even a correction of a mistake under S. 152, C. P. Code, in the decree, have the effect of superseding the original decree so as to necessitate the dismissal of an appeal, which is presented with a copy of the original decree (*Coldstream and Jai Lal, JJ*) LOCAL COMMITTEE, GURDWARAS *v.* SARDUL SINGH.
A I.R. 1938 Lah. 76

—— O. 41, R. 1 and S. 104—*Applicability—Order in contentious proceedings under S. 295—Succession Act—Appeal — Production decree—Necessity—Form of decree.*

An appeal filed against an order passed in a contentious proceedings is an appeal filed under O. 41, R. 1, and not under S. 104 of the Code. Hence an appeal against an order in a contentious proceeding granting

probate or letters of administration with the will annexed is incompetent without the production of a copy of a

——O. 41, R. 1—*Scope—Provisions, if mandatory—Copy of decree not attached—Effect—Attaching of judgment, if optional*

The provisions of O 41, R. 1 are mandatory and an omission to attach a copy of decree is fatal to the appeal. As regards judgment it is for the Court to decide whether a copy of judgment may be dispensed with or not and the matter is not optional with the litigant and if the Court does not dispense with it and if a copy of judgment is not filed, the appeal is incompetent. (*Vivian Bose, J.*) CHETANLAL PURSHOTTAM v G S. GUPTA 175 I C 33=11 R N. 22= A I R 1938 Nag 233

——O 41, R. 2, proviso—*Power of Court under—Decision of case on point raised by Court* suo motu—*If justified*

I

——O 41, R 4—*App*
several appellants—Abate

The provisions of O 4
appellant whose appeal h
the effect of the abatem
purposes there is no appe
whose appeal has abated,
malicious prosecution or
had conspired to implicate him in a false charge of dacoity A decree was passed and the defendants appealed During the pendency of the appeal one of the appellants died and his heirs were not brought on record

Held that as no decree could have been passed against the defendants unless the charge of conspiracy was proved, the decree appealed from proceeded o
common to all defendants and hence O 41, R
(*Fazl Ali, J.*) NARAIN PANDE v GAYA RA
174 I C 388=4 B R 429=10 R
19 Pat L T 398=A I.R 1938

——O 41, R 4—*Applicability—Some o*
plaintiffs appealing—Others impleaded — Common interest—One of the non appealing plaintiffs and a pro forma *defendant dying—Legal representat*
brought on record—Appeal, if can continue as
the rest—O 22, R. 4

When a question arises as to the applicability
41, R. 4 there is no essential difference between
case where some only of the plaintiffs or defenda

plaintiffs have appealed and have impleaded the other non appealing plaintiffs and the *pro forma* defendants having the same interest as the plaintiffs and one of the non-appealing plaintiffs or *pro forma* defendants

dies and the heirs are not brought on record. Where some only of the plaintiffs appealed impleading a non-

1938 R.D 312=1938 A W R (H C) 138= A.I.R 1938 All 235.

——O. 41, R 4—*Power of Court—Abatement of appeal—Court's power to vary decree*

Provisions of O 41, R. 4 enable the Court to vary the decree as a whole even though the appeal of one of the appellants might have abated by reason of death. (*Burn, J*) SAKKARAI CHETTIAR v. CHELLAPPA CHETTIAR. A I R 1938 Mad. 374.

——O. 41, R 4—*Powers of Court—Dismissal of suit by two plaintiffs—Appeal by one only—Other impleaded as party but no appeal by latter—Decree in favour of latter also—Power to pass*

Where a suit filed by two plaintiffs as reversioners to an estate is dismissed on the ground that they are not the reversioners, and one of them prefers an appeal in
r also as
power to
ie appel-
plaintiff,
dismis-
appellate
appeal
whole decree, which proceeded on
to both the plaintiffs, O. 41, R 4

10 R A 414=1937 A W R. 916= 1937 R D 548=1937 A L J. 1111= A.I R. 1937 All 796

——O. 41, Rr 4 and 33—*Relief to persons not before Court—Exercise of discretion—Principles*

Ordinarily when a person submits to a decree it is no

Court in doing complete justice. To meet this contingency O 41, Rr 4 and 33, C P Code, have been

Court. (*Sen, J*) 43 C.W N. 15.

by some only of

The provisions of O 41, R. 4 simply lay down that one or more plaintiffs *may* prefer an appeal where a decree proceeds on a ground common to all, but it d
not lay down that the others are not necessary par

suit. (*Skemp, J.*) MANOHAR LAL *v.* KISHAN LAL 176 I C 919=11 R L. 249= A.I R. 1938 Lah 10

——O 40, R. 1—*Partition suit—Receiver—Appointment of—Justification.*

In a suit by a minor for partition of the family properties, it was found that he was entitled to a half share in the properties, that the quarrels in the family and the conduct of the defendant made it impossible for the plaintiff to get his fair share of the harvest and it also appeared that so long as the properties remained with the defendant the plaintiff would not be able to secure his fair share of the income. The lower Court appointed a receiver to harvest the crops.

Held, that the circumstances of the case justified the [illegible]

C

The proper remedy of the lessee for breach of contract of lease entered into by the Receiver is only against the [illegible]

——O. 40, R. 1—*Receiver—Appointment—Effect—Property in possession of receiver—Suit of—Sanction of Court—Necessity.*

Where an estate is in the possession [illegible] appointed by Court, a suit for possession [illegible] from that receiver can only be brought wit[illegible] Court. It is necessary for the plaintiff to apply to the [illegible]

——O. 40, R. 1—*Receiver—*[illegible] *ment—Courts of concurrent* [illegible]

[illegible] in the other [illegible] appointed, the proper procedure for protection of one's interest is not to apply to another Court of concurrent jurisdiction for the appointment of another receiver, but to apply to the Court which has already appointed a receiver for adequate protection. (*M. Nair, J.*) ANANDINATH MUKHERJEE *v.* SHIBCHARAN TRIGUNAIT. 42 C.W.N. 33

——O. 40, R 1—*Receiver—Position of—If legal representative of party—Estate including decree to be executed—Execution—Procedure for execution of decree by receiver.*

Receivers appointed by the Court are officers of the Court, and are not the legal representatives or assigns of the parties to the suit; nor is it the practice of the Court to bring receivers on the record in a suit and subject them to liability as to costs. Where an estate of which a receiver has been appointed includes a decree to be executed, the proper procedure is for the receiver to apply in the suit in which he was appointed (unless it already has the power) for liberty either to file a fresh darkhast in his own name for execution or to continue the existing darkhast (when one has been filed and is pending) in the name of the darkhastdar on giving him a proper indemnity as to costs (*Beaumont, C.J. and Wassodew, J*) HANMANT *v* JAINAPUR 178 I.C. 395=40 Bom L.R. 932= A I.R 1938 Bom 458.

[illegible] *of receiver—Defen*[illegible] *ick off—If entitled*

[illegible] joined in a suit on a mortgage and the mortgagee gets a receiver appointed to take charge of certain land covered by the mortgage, [illegible]

[illegible] sion of the land at the time the receiver was appointed [illegible]

[illegible] 205—*Receiver's fees—Powers of Court.* [illegible]

[illegible] *copy of original* [illegible]

A I.R. 1938 Lah [illegible]

——O. 41, R. 1 and S 104—*Applicability—Order in contentious proceedings under S. 295—Succession Act—Appeal—Production decree—Necessity—Form of decree.*

An appeal filed against an order passed in a contentious proceedings is an appeal filed under O. 41, R. 1, and not under S. 104 of the Code. Hence an appeal against an order in a contentious proceeding granting

C. P. CODE (1908), O 41, R 1.

probate or letters of administration with the will annexed is incompetent without the production of a copy of a …

ment, if optional.

The provisions of O. 41, R 1 are mandatory and an omission to attach a copy of decree is fatal to the appeal. As regards judgment it is for the Court to decide whether a copy of judgment may be dispensed with or not and the matter is not optional with the litigant and if the Court does … a copy of judgment is not … tent. (*Vivian Bose, J.*) C … v. G.S. GUPTA.

——O 41, R 2. provis… *Decision of case on point raised by Court* suo motu—… *justified*

…

1 …

——O 41, R 4—*Applicability—Death of one of* …

dacoity A decree was passed and the defendants appealed …

a …

t …

proved, the …

common to …

(*Fazl Ali, J* …

——O. 4 … *plaintiffs* … *interest—One of the non appealing plaintiffs and a* pro forma *defendant dying—Legal representatives not brought on record—Appeal, if can continue as against the rest—O 22, R. 4.*

When a question arises as to the applicability of O 41, R. 4 there is no essential difference between (1) a case where some only of the plaintiffs or defendants, as …

C. P. CODE (1908), O. 41, R. 4.

dies and the heirs are not brought on record. Where some only of the plaintiffs appealed impleading a non- …

——O. 41, R. 4—*Power of Court—Abatement of appeal—Court's power to vary decree.*

Provisions of O. 41, R. 4 enable the Court to vary the decree as a whole even though the appeal of one of the appellants might have abated by reason of death. (*Burn, J*) SAKKARAI CHETTIAR v. CHELLAPPA … A.I.R. 1938 Mad 374.

… *t—Dismissal of* … *only—Other im-* … *tter—Decree in* … as reversioners …

… he appel- … plaintiff, … dismis- … appellate … 41, R 4, C P. Code. The appeal … whole decree, which proceeded on … to both the plaintiffs, O 41, R 4 applies to the case with full force and the appellate Court … led to pass a decree in favour of both … 41, R. 4 is based on two considera- … the appellate Court full power to do … es whether before it or not, and, … ent contradictory decisions in the suit. (*Ganga Nath, J.*) JAGDEI … 172 I C. 635=1938 A.L.R. 8=10 R A. 414=1937 A W.R. 916=1937 R.D. 548=1937 A L J 1111=A I R 1937 All 796.

…

… gency O 41, Rr 4 and 33, C P Code, have been enacted These provisions give the Court a wide discretion to grant relief to persons who are not before the Court either as Appellants or Respondents These discretionary powers, however, should be cautiously used and the exercise of these powers, when it is not necessary, would constitute an error of law and procedure … Court. (*Sen, J.*) 43 C.W.N. 15.

… *by some only of* …

… lay down that … appeal where a … all, but it does … ecessary parties, …

Where the suit is one for declaration in respect of the partition of joint property, all plaintiffs' co sharers are necessary parties to an appeal ...
such a suit.
appeal is lia
necessary pa ... KARTAR SINGH *v.* WARYAM SINGH. 40 P.L.R. 6

——O. 41, R 5—Order under refusing to stay execution pending appeal—Appealability *See* C. P. CODE, S. 2 (2) 40 Bom.L.R. 1198.

——O. 41, R. 6 (1)—*Order directing execution to proceed on furnishing of security—Security to the 'satisfaction of the Registrar'—Report by Registrar—*

...

the security cannot come up to the Court again, as it would be in the nature of an appeal, which does not lie But there is no doubt the Court can review its own order on proper grounds. (*S K. Ghose and Patterson, JJ*) BIBHABATI DEBI *v.* RAMENDRA NARAYAN ROY 66 C.L.J. 169=42 C.W.N. 188.

——O. 41, R. 10—*Applicability—Original side*

...

A I R 1938 Bom. 351.

——O 41, R 10—Applicability—Revision application—Security for costs—Powers of High Court to order. *See* C.P. CODE, S. 151. 40 Bom.L.R. 1025

——O 41 R 10 ...

...

said a claim was of a vexatious character and his conduct has been *mala fide* throughout. Though a respondent should be prompt in applying for security for costs,

...

A ...

——O. 41, R. 10—*Security for costs—Appellant being a minor and a pauper—If can resist application* ... *creature in the* ... *proper.*

and is a mere creature in the hands of persons well able to find security he can be called on to furnish security for costs. The fact that the appellant is both a minor and a pauper does not by itself entitle him to resist the application for security for costs (*Venkatasubba Rao and Abdur Rahman, JJ.*) ...
IYER.

A I R ...

...

sub r. (1). The power of the appellate Court to take these two courses under R. 11 is not taken away when a notice is issued to the respondent and the respondent appears in accordance with that notice. (*Bennet, A.C.J. and Varma, J.*) CHIMMAN LAL *v.* ZAHURUDDIN.

...

——O. 41, R. 11—*Powers of Court—Summary dismissal of appeal—When justified.*

An appellate Court should not dismiss an appeal summarily without any due regard to the nature of the questions ... arise for ... of summary ... especially in ... the parties ... careful exa- ... (*Manohar* ... ANDAR *v.* ... B R. 389= ... L T. 305=
A.I.R. 1938 Pat. 330.

——O. 41, R. 11—*Procedure—Case involving elaborate questions of law and fact—Summary dismissal—*

...

C. P. CODE (1908), O. 41, R. 17.

CHOTOO LAL v. MST. BIBI SEKINA.
19 Pat.L T. 210=

——O. 41 Rr. 17 and 19—*At ...ing Court to attend another case a ... derable time on date of hearing— ... absence and dismissed summarily— ... of order.*

Where on the date fixed for hearing of the appeal, the appellant's Counsel waited in Court from 10 A M to 3-20 P.M. and then left to attend a case in another Court, and the Court after finishing the hearing of a previous appeal at 3 50, called the appeal in the absence of the counsel and dismissed it summarily.

Held that in the circumstances, the Court did not exercise a sound judicial discretion in proceeding so

——O 41, R. 19—*Right to apply ... dismissed for default of appellant— ... appellant pending appeal*—Locus stand ... *restoration*

O. 41, R. 19, C P. Code, contempl ... applicant seeking to have an appeal rest ... to prove that the appeal was his, and al ... prevented by sufficient cause from appe ... appeal was called on for hearing. A p ... got an assignment of the property in dispute from the appellant after the filing of the appeal has no *locus standi* to apply under O 41, R 19 to restore to file the appeal which has been dismissed for default of the assignor appellant (*Wort, A C. J and Manohar Lall, J*) NARAIN CHANDRA KHAN v. JAGANNATH ACHARYA.
177 I C 152=4 B R 798=
11 B P 134=1938 P W N 601=
A I R 1938 Pat 574

——O 41, R 19—Applicability—Application for restoration of appeal dismissed for non payment of printing cost. *See* COURT-FEES ACT, SCH. I, ARTS. 4 AND 5 AND SCH. II, ART 1 (*d*)
A I R. 1938 Pat. 111=19 P.L T. 17.

——O 41, R 20—*Applicability—Omission to implead owing to no fault of party—Power of appellate Court to add after expiry of period of limitation*

Where omission to add a party was not deliberate, but the error was due to the Collector's office in not in-

A per ... second ... (*Westo* ...

——(... *of suit—Legal representatives brought on record—In appeal, legal representatives not impleaded until right of appeal barred against them—Court, if can implead them.*

C. P. CODE (1908), O. 41, R. 22.

such persons cannot be deemed to be persons interested

40 P.L R. 273=A I.R 1938 Lah. 35.

——O. 41, R. 20—*Discretion under—Exercise of—Principles.*

Where the appellants were not able to show any good reason why the omitted parties were not impleaded though they were obviously necessary parties, the Court would refuse to permit them to be impleaded in appeal, in the exercise of its powers under O. 41, R. 20 (*Bhide,* ... RTAR SINGH v. WARYAM SINGH.
40 P L R. 6.

... 41, R 20—*Party 'interested in the result of* ...

——O. 41, R. 20—"*Person interested in result of appeal*"—*Person against whom appeal is barred by time.*

Where an appeal against a person has become barred by time he ceases to be "a person who is interested in the result of the appeal" within the meaning of O 41, R. 20 and his name cannot be subsequently added as a respondent under O 41, R. 20 (*Young, C J. and Monroe, J.*) RAMESHWAR DAS v. OFFICIAL RECEIVER, DELHI.
I L R 1938 Lah 398=
A.I R 1938 Lah. 325.

——O. 41, R. 22—*Cross-objections—If can be entertained against a party to the suit, not impleaded as a party to the appeal—Cross-objections filed against such party—Effect.*

Where the plaintiff claimed relief against both defendant 1 and defendant 2 and the first defendant raised the plea that he was an unnecessary party to the suit but the Court found that there were no merits in his objection, but the first appellate Court held that the first ... party, and the second ... al impleading only the ... is entitled to file cross- ... ndant, although he was ... appeal. By putting in ... fendant has been im ... ndent is entitled to file

——O 41, R 22—*Cross objections filed by deceased respondent—His Legal Representatives brought on record by appellant—If can maintain cross objections.*

PRODYOT KUMAR *v.* RADHAKISHEN.
42 C.W.N. 304.

——O. 41, R. 22—*Decree for mesne profits by trial Court for certain amount—Appellate Court reducing certain items—Rights of respondent, without memorandum of cross objections, to support decree of trial Court by showing that other items of profits may be assessed at higher figure.*

When an item in an account appearing in the decree of the lower Court is reduced by the appeal succeec the respondent without filing any memorandum of ci objection can support the said decree by showing the lower Court had wrongly decided against hir

constituent elements without filing memoranda of cross-objections. He is entitled to urge that if interest be reduced by the appellate Court, the p assessed at a higher figure, if the evidenc provided that the total does not excee decreed as mesne profits by the lower (*versa.* (*R.C. Mitter and Biswas, JJ.*) NARAYAN RAY *v.* BHAIRABENDRA NARA
68 C.L.J. 152=A.I.R. :

——O. 41, R. 22 (4)—Scope—Appeal—Cross-objection by respondent—
C. P. CODE, S. 10'

——O. 41, R. 22 (4)- *Scope of—Abatement of appeal—Cross objection—Effect on.*

Cross objection is part of an appeal and when an appeal goes out for any extraneous reasons as abatement, it follows that the cross objection should ordinarily go out with it
in O. 41, R
Clarke, J.)

——O. 41, R. 25—*Power of Court—Issue on point not pleaded—If can be remitted—Right of party to allege or prove facts not in accor facts.*

An appellate Court cannot remit a tance of a party upon a point whic by him, a party cannot be allowed in he is prepared to allege or prove necessary, even if the allegations are not in accordance with the real facts. (*Niamatullah, Ag. C.J. and Allsop, J.*) GAYA DEEN MISIR *v.* TIRBHUWAN SINGH. 1937 A W R 1183=1937 A L J. 1252.

——O. 41, R. 27—*Additional evidence—Admissibili-*

is heard a party applies to adduce fresh evidence but when on examining the evidence as it stands some inherent lacuna or defect becomes apparent. It may well be that the defect may be pointed out by a party or that a party may move the Court to supply the defect but the requirement must be the requirement of the Court upon its appreciation of the evidence as it stands. Consequently it is not open to the appellate Court to admit

——O. 41, Rr. 27 and 29—*Additional evidence—*

Judge against the the appellants filed C. P. Code, for ad itional evidence, a review application on the basis of these documents was

definite reason for admitting the evidence except the n the interests of justice', and no opportunity, to the opposite side to adduce rebutting evi-

that the procedure adopted by the District Judge is irregular and must obviously have prejudiced the other party and his order in the appeal should be set aside The formula 'in the interests of justice' may mean everything or may mean very little The word 'requires' in O 41 R 27 (1) (*b*) means 'finds it need-
, *J.*) SRINIVASAM PILLAI *v.*
1938 M.W.N. 1147=
797=A.I.R. 1938 Mad 372=
(1938) 1 M.L.J. 50.

——O. 41, R 27—*Additional evidence in appeal—*

rcise of the discre- ot whenever, before adduce fresh evi- dence as it stands es apparent. (58 I.A. 254, Foll) (*Dalal, J.*) RAM SARUP *v.* SARNU MAL.
177 I C 305=11 R L 294=
40 P.L.R. 198=A.I.R. 1938 Lah. 114.

——O. 41, R. 27—*Additional evidence—Opportunity to rebut.*

removed, the re-registered document can be admitted in evidence on second appeal. (*Din Mohammad, J.*)

Where a plaintiff refused to comply with the order

tion to appoint a C
receive additional ev
in the evidence on
under O. 41, R. 27 ought to be very sparingly used. (*Zia-ul-Hasan*
GOPAL.

——O. 41, R. 27—Scope—New evidence admitted and

its judgment cannot be upheld in second appeal and the Court sitting in second appeal will not take into consideration the new case. (*Davis, J.C. and Mehta, J.*)

second appeal.
O. 41, R. 27 (1) does not forbid the produc
additional evidence but states that the parties entitled to produce it, although the Court ma

for judgment they were produced but the Court refused to accept them then and dismissed the suit. The

the evidence.
Held, that the reference made by the Court and the

though not evidence *de jure*. The documents that were so dealt with could therefore hardly be said to be "new evidence". The irregular reference to them in the trial

——O. 41, R. 27(1)(b)—*Additional evidence—Admission by the Court with the consent of parties—Record of y Court not adequate—Effect of order—Duty of Estoppel of party contenting to admission of*

by consent of parties the appellate Court additional evidence, and the reasons given by it did not strictly comply with the terms of O. 41, R. 27 of the C. P. Code.

a large extent cover the defects in the record of the 7 M.L.J. 347=34 I.A. 115= 19 M.L.J. 435=36 I.A. 221 on. Even if the reasons deemed inadequate, the consent of the party to the admission of further evidence ssibility of that 5 I.C. 226, Not GOUNDAN v. 48 L.W. 546= 2 M.L.J. 740. *of fresh evidence.*

The test laid down in Cl. (*b*) of O. 41, R. 27, *viz.*, 'if the Appellate Court requires any document to be pro-

40 P.L.R. 646=A.I.R. 1938 Lah. 161.

——O. 41, R. 27 (b)—*Powers of Court—Additional evidence—When to be admitted*

additional evidence as it considers fit. (*Ismail, J.*)

1 R.A. 40= H.C.) 294= 38 All. 353

——O. 41, R. 27 (1) (b)—*Scope of power under—Remand for insufficiency of evidence to prove the case—If justified*

———O. 41, R 29—*Object.*

The rule in O 41, R 29 serves a very useful purpose namely that it ensures that the appellate Court will consider exactly on what points there is a lacuna which

[illegible]

SRINIVASAN PILLAI *v* ALAGAPPA CHETTIAR.
1938 M W N 1147 = 48 L W. 797 =
A.I R 1938 Mad. 372 = (1938) 1 M.L J. 50.

———O. 41, R 31, Ss. 99 and 108—*Judge after giving judgment going on leave without signing it—Irregularity - If curable.*

Rule 31 of O. 41 does not say that if its requirements are not complied with, the judgment shall be a nullity. So starting a result would need clear and precise words. Indeed, the rule does not even state any definite time in which it is to be fulfilled. The time is left to be defined by what is reasonable The rule from its very nature is not intended to affect the rights of parties to a judgment It is intended to secure certainty in the ascertainment of what the judgment was It is a rule which Judges are required to comply with for that object. No doubt in practice Judges do so comply, as it is their duty to do. But accidents may happen. A Judge may die after giving judgment but before he has had a reasonable opportunity to sign it. The Court must have inherent jurisdiction to supply such a defect. The case of a

[illegible]

———O 41, R 31 and O 20, R 4 (2)—*Judgment of the appellate Court—Contents*

It is not a sufficient judgment within the C P Code to state that the Judge is in agreement with the finding of the Court below. He is bound to express his reasons for the finding at which he arrives, and, although he need not, so far as the questions of fact are concerned, deal in detail with the evid [illegible] ved at by him in or [illegible] the Code (*Wort* [illegible]
PRAKASH DAS *v* [illegible]
173 I C 473 = 4 B R 293 = 10 R.P. 415 =
1937 P.W N 821 = 19 Pat L T 362 =
A.I.R. 1938 Pat 69

———O 41, Rr 32 and 33—Scope—Deficiency in court fee on plaint—Order for payment by trial Court within fixed time—Appeal—Power of appellate Court to extend such time *See* C P CODE SS 2 (2) AND 148.
1937 A L J 1346 = 1938 A W.R 13 (H C)

———O 41. R 33—*Power to amend decree—Judgment imposing personal liability for costs on mortgagor—Decree drawn up in usual form and making no mention of such liability.*

Where the judgment imposes personal liability for costs on the defendant mortgagor in express terms, but the decree is drawn up in the usual form and nowhere imposes any personal liability on the mortgagor for costs, what is executed is the decree and not the judgment, and unless the decree is brought into conformity with the judgment, it will not be permissible to the decree holder to realize the costs in suit personally from the mortgagor. O. 41, R. 33, invests an Appellate Court with plenary powers and authorizes the Court to pass any decree or order as the case may require and even in favour of any respondent who may not have appealed. Even otherwise under S. 151, C. P. Code, the inherent powers of the Court to make such orders as may be necessary [illegible] The Appellate [illegible] d and brought [illegible] *stream and Din* [illegible] JAIN MANDIR PANCHAITI. I L R. 1938 Lah 148 =
40 P.L R. 640 = A I R 1938 Lah. 188.

———O. 41, R 33—*Power of appellate Court—Interference in favour of a party not appealing—Conditions.*

O. 41, R. 33 has been enacted to empower the appellate Court to do complete justice between the parties. The appellate Court has power under this rule to vary the decree of the lower Court although the variation may benefit a party who has not appealed, for example, where such party has not been able to find the money for preferri [illegible] is undoubte [illegible] *Rahman, J* [illegible] SAMMA. [illegible]
1 [illegible]

———O. 41, R 33—*Powers of Court—Power to deal with case of non-appealing party.*

It is within the power of an appellate Court to deal with so much of the decree under appeal as affects a [illegible] against the decree by [illegible] 41, R. 33, C. P. Code. [illegible] *James J*) SARAT [illegible]
1938 P W N. 523.

[illegible] *r—Defendant exonerat-* [illegible] *laintiff as against him* [illegible] *lief as against such* [illegible] rt under O. 41, R 33, C P Code, are sufficiently wide to enable it to grant a relief to a plaintiff against a defendant though as against him the plaintiff has not appealed. (*Wort and Varma, JJ.*) KESHWAR SAO *v* GUNI SINGH
17 Pat. 338 = 176 I C. 269 = 4 B R. 694 =
11 R P. 75 = 19 Pat L T. 198 =
1938 P.W N. 211 = A I R 1938 Pat. 275.

———O 41 Rr 33 and 4—Relief to persons not [illegible] of discretion—Principles. *See* [illegible] 4 AND 33 43 C.W.N. 15.

[illegible] *cope of—Decree in favour of non-appealing plaintiff and against non-appearing defendant—Powers of Court.*

Where in an appeal by certain defendants, the plaintiff and one of the defendants were made respondents and the defendant respondent did not appear, the appellate Court passed a decree in favour of the respondent plaintiff and against the respondent defendant, it was held that under O. 41, R. 33 the Court had ample powers to pass such orders. (*Varma, J.*) ETWARI MAHTO *v* GANGA MAHTO 174 I C 452 =
4 B R 449 = 10 R P. 520 = A I R 1938 Pat. 323.

———O 43, R. 1—Order rejecting memorandum of appeal for non compliance with O 41, R. 1—Appealability. *See* C. P. CODE S 2 (2) 17 Pat. 215.

———O. 43. R. 1—Scope—Order rejecting memorandum of appeal for insufficient Court-fee—Appeal. *See* C P. CODE, S 2 (2) (1938) N L J. 1 (F.B.).

———O. 43, R 1—Scope—Order returning plaint on ground of pecuniary jurisdiction—Appeal
See A I.R 1938 Sind 124.

——— O. 43, R. 1 (a)—*Plaint filed in Court to which directed—Right to appeal—If lost.*

C. P. CODE (1980), O. 43, R. 1

A plaintiff is not precluded from prosecuting his appeal against the order returning his plaint for presentation to proper Court, if in compliance with that order he presents the plaint to another Court in order to save limitation in case his appeal is dismissed (*Bhide, J.*) NANU MAL *v.* SHIBBA MAL NAND KISHORE.

40 P.L.R 975

——O 43, R. 1 (e)—*Application to add party—Order on—Appeal.*

——O 43, R 1 (j)—Scope—Application to set aside sale under O. 21, R. 80—Refusal to accept security instead of deposit—Propriety—Dismissal of application to set aside sale—Appeal from both orders—Competency. *See* C. P. CODE. O. 21, R. 90 (1) (PATNA AMENDMENT), PROVISO (1) (*b*). 17 Pat 107

——O. 43, R 1 (k)—*Scope—"Suit"—If includes appeal—Order refusing to set aside abatement of appeal—Appealability—O 22, R 11—Application of.*

An order refusing to set aside an abatement of an appeal is appealable under O 43, R 1 (*k*), C. P Code, the word "suit," in the rule also covers an appeal. O 43, R. 1 (*k*) has to be read with reference to O. 22 R. 11, which applies to R. 9 of O 22. (*Wort and Varma, JJ.*) WAJID ALI *v.* FAGOO MANDAL

17 Pat. 84 = 174 I C 40 = 4 B R. 379 = 10 R P. 471 = 18 Pat L T. 1014 = A.I R 1938 Pat 125.

——O 43, R. 1 (m)—*Order recording compromise—Appeal—If competent after decree*

An appeal from an order recording a compromise is not incompetent merely because it was preferred after a decree had been made It is not necessary to prefer an appeal both from the order and decree passed in pursuance of the order 141 I C. 732, Rel on. (*Din Mahomed, J.*) JARNAIL SINGH *v.* NARAIN KAUR.

40 P.L R 664 = A I

——O 43, R. 1 (m)—*Time for*
—Minor party—Court refusing co
be preferred at once

Where there has
is concerned, if th
compromise, it sh
without waiting fc
remedy under O 43, R 1 (*m*) would become time-barred. (*Dar ing, S M an*
v. KHEDU SINGH.

——O. 43, Rr. 1 (m) &
recording compromise and
Filing of copy of such order—Sufficiency.

Where a Court passes one consolidated order recording a compromise and granting a decree in terms thereof, an appeal lies from the order recording the compromise under the provisions of O 43, R 1 (*m*) C P Code, If

A I R 1938 Lah 350

——O 43, R 1 (s)—Applicability—Order dismissing application for removal of receiver *See* C P CODE O 40, R 1 AND O. 43, R 1 (S) A I R 1938 Rang 387

——O 43, R 1 (s)—Nature of order appealable under. *See* C. P. CODE, O. 40 R. 1, AND O 43 R. 1 (*s*). A.I R 1938 Nag. 540.

C. P. CODE (1908), O. 45, R. 7.

——O 43, R 1 (s)—Order appointing receiver, when appealable. *See* C. P. CODE, O. 40, R. 1 AND O. 43, R 1 (*s*). 174 I C. 148.

——O. 43, R 1 (s)—*Order that receiver should be appointed—Appeal, if allowed.*

There can be no question that the order from which an appeal is allowed by the law is not one by which it is ordered that a receiver should be appointed but the order by which some person or persons are appointed ... *Ghose, JJ.*)
DASI.
O L J. 107.
... receiver to
...—If lies.
... fuses to act, an appeal on the point whether a receiver should or should not be appointed can be entertained. (*Skemp, J.*) MANOHAR LAL *v.* KISHAN LAL

176 I.C 919 = 11 R L 249 = A I R. 1938 Lah. 10.

——O. 44, R. 1 and O. 33, R. 1—*'Person'—If includes limited company.*

The word 'person' in O. 33 R. 1 and so the word 'person' in O 44, R. 1, C. P. Code, does not include a limited company incorporated under the Indian Companies Act. Consequently, an application by a limited company for leave to appeal *in forma pauperis* under the provisions of O. 44, R. 1, is not competent.

Per *Costello J*—It is doubtful whether it is even right to say that the word 'person' includes a liquidator of a limited company in liquidation (*Costello and Biswas, JJ*) BHARAT ABHYUDHOY COTTON MILLS, LTD *v.* KAMESHWAR SINGH. 42 C W N 1164 = A I R 1938 Cal 745.

——O. 44, Rr 1 and 2—*Application to appeal as pauper—Duty of Court—Procedure*—Ex parte *order admitting application—Respondent's right to question its propriety*

The correct procedure on the presentation of an application for leave to appeal as a pauper is, if the

appeal *in forma pauperis* is admitted in the absence of

1938 Rang L R 651.

——O 45, R 4—*Consolidation of appeals—Power of High Court—R 7 of Schedule to Rules of Indian Order in Council.*

R. 7 of the Schedule to the Rules of the Indian ... ding appeals
with power
purpose of
within the
O 45, R 4 (*Coldstream and Bhide, JJ.*) CHANDAR BHAN *v* FATEH SHER

40 P L R 658 = A I R 1938 Lah 207.

——O. 45, R. 7—*Compliance—Security for cost under—Time for—Security bond executed and filed Court by surety within time—Subsequent withd by surety from undertaking—Deposit of cash ciency—Security—If furnished within time.*

C. P. CODE (1908), O. 45, R. 7.

An applicant for leave to appeal to the Privy Council was allowed at the time of grant of leave to furnish security of another kind than in cash or Government

duly registered and filed in Court within the time limited by O. 45, R. 7, C. P. Code, but
sent for verification, *S N* stated th
ing to stand surety any longer.
deposited the requisite amount in ca
respondent objected that the security

(*Niamatullah and Verma*
SHIAM LAL.
1938 A.L
1938 A.W.R. 9(

——O 45, R 7 and P
the security—Extension of
Under R. 9 of the Privy
has full discretion to exten
rity or to extend the time to make good any deficiency in the security furnished. (*Thomas, C. J. and Zia ul Hasan, J*) RAJA MOHAN MANUCHA *v* MANZUR AHMAD KHAN. 178 I C 389=1938 O.W N 1121=
1938 O L R. 485=1938 A.W.R. C.C. 113.

——O. 45, R. 7—*Extension of time for giving security—Power of Court.*

Court cannot extend time for
the period prescribed by O. 4
(*Coldstream and Bhide, JJ*)
FATEH SHER. 40 P.L R 658=

——O. 45, R. 7—*Extension*
Court.

The provision relating to t
security is to be given embodied in O.
Code, is directory only and the Court
appeal is preferred has power to ext
cogent reasons are forthcoming (*Ad*
and Din Mahomed, J.) PREMI
BANK OF NORTHERN INDIA, I

——O 45, R. 7—*Furnishing of security* — *time expiring during vacation—Security, if can be furnished on reopening day.*

If the time for the furnishing of the security under O. 45, R. 7, C. P. Code, expires on a day when the Court is closed for the vacation, compliance with the

making deposit—Power of Court to extend—Privy Council Rules, R. 9.

In an appeal to His Majesty-in-Council the High Court has power under R. 9 of the Privy Council Rules to extend the period allowed for furnishing the security

C. P. CODE (1908), O. 47, R. 1.

1938 M.W.N. 678=48 L W. 35=
A.I.R. 1938 Mad. 796=(1938) 2 M.L J. 128 (F B.).

——O. 45, R. 9—*Acceptance of security—When may*

has power
ished under
under R. 8
and not at any subsequent stage. (*Adatson, Ag. C.J.*

Specific prayer for transmission to Court concerned, if necessary—Procedure adopted by Chief Court, Oudh with reference to such applications.

When an application under O. 45, R 15, C P. Code prays that the memo of costs be prepared, it includes also a prayer for transmission of the order to the Court concerned. The usual practice adopted by the Chief

15 (2), C. P Code it
directions and parti-
ed for. (*Thomas, C.*
v. DEO SINGH.
178 I.C 212=1938 O L R. 476=
1938 O W N. 1045=A I.R 1938 Oudh 250.

——O 47, R 1—Applicability—Appeal—Dismissal for non payment of printing charges—Application to restore—If one for review. *See* COURT FEES ACT, 5. A.I.R. 1938 Pat. 111.

—*Application—Suit dismissed for*
R. 8 or under O. 17, R. 3—

been dismissed for default or
P. Code, there is no ground for
any application in review. The remedy of the plaintiff lies either in an appeal if the order of dismissal is passed under O. 17, R. 3, C. P. Code, or is an application under O. 9, R 9, if the suit is dismissed for default. (*Darling, S M. and Bomford J. M.*) BALWANTI *v.*
) 115=1938 R D. 184.

arent on the face of the
compulsorily registrable
award without atten-
review—Power of Court.

See REGISTRATION ACT, SS. 17 (1) (*b*) AND 49. 40 Bom.L.R. 952.

——O. 47, R. 1—*"Mistake or error apparent on the face of the record"—Meaning of.*

Rule 1 of O. 47, C P. Code, is definitive of the limits within which review is permitted. A mistake of law is not in itself a sufficient mistake or error apparent on the

closed without referring t
There is no difference
debatable point. An err
analogous to an error
record. Nor would an o
amount to a mistake or error on
(*Stone, C.J. and Puranik, J.*)
CHANDRA. I L.R. 1938 Nag. 1

——O. 47, R 1—*Mistake or*
record—Debateable point of law
If a ground for review.

An erroneous view of the law on a debateable point or a wrong exposition of the law or a wrong application of the law cannot be considered a mistake or error on the face of the record, and as such cannot be a ground for review. (*Ismail, J.*) KISHAN CHAND SINGH *v.* MUKAND SAWARUP. 175 I C. 586=1938 R D. 496=10 R A. 703=1938 A.L R. 448=1938 A.W.R (H C) 196=A.I.R. 1938 All. 308

——O. 47, R 1—*New evidence—Proof required*

DHONE MAJUMDAR. I.L.R. (1938) 2 Cal 361.

——O 47, R. 1—*Revenue Courts—Grounds of review*

Though a petition for review of the Board's order may

——O 47, R 1—*Review—'For any other sufficient reason'—Mistake or error on the face of the record—Meaning of*

applies, it may be a mistake apparent on the face of the

record. (*Stone, C. J. and Puranik, J.*) JAGARAO ANNAJI *v.* BALWANT TUKARAM. 175 I C. 649=11 B.N. 4=A.I R. 1938 Nag. 221.

——O. 47, R. 1—*Review—Ground for—Mistaken view of law.*

It may be possible to argue that a review lies if a

A.I R 1938 Nag. 221.

—*Review—Grounds for—Predecessor*
the only point of importance—If
sufficient reason'.

face of the record,' entitling a succeeding Judge to review the order of his predecessor. (*Burn and Lakshmana Rao, JJ.*) SATYANANDAM *v.* NAMMAYYA. 47 L W 51=1938 M.W.N. 656=A.I R 1938 Mad 307.

——O. 47, R 3—*Application for review—Copy of order sought to be reviewed—If should be filed—Affidavit—If necessary.*

Under O. 47, R. 3, C P Code, it is not necessary to

——O. 47, R. 3—*Review—Application not accompanied by copy of order sought to be reviewed—If bad for material irregularity—Omission—If fatal—Procedure.*

said to be bad
that no copy of
along with the
y of the order is
the application
e taken as dis-
', *and Bomford,*

1938 R D. 184.

ite party'—Pro forma defendant—Proceedings ex parte *against him throughout—Notice of review to him—If necessary.*

In a suit by some reversioners for setting aside an

him was necessary before the review was granted.

C. P. CODE (1908), O. 47, R. 7.

Held, that the *pro forma* defendant could not under

———**O. 47, R 7**—*Order* … *compliance with O 47, R 3—If a ground of appeal.*

An order allowing an application for review is not appealable on the ground that the application was not in compliance with R 3 of O. 47, C. P. Code. An appeal can lie only on the grounds mentioned in R. 7 (*Darling, S M and Bomford, J M*) BALWANTI *v.* BADAL 1938 R D. 184 = 1938 A W.R. (B R.) 115.

———**Sch. II**—*Reference to arbitration—Death of a party to—Effect of—English law, applicability—Add-*

bound by the decision Though if a party dies before the completion of the hearing, it would be necessary to make the representatives, parties to the submission, where the death occurs after the termination of the hearing and just before the delivery of the award, the delivery of the award without the addition of the representatives, is none the less binding on the represent-

A.I.R 1938 Oudh 125.

———**Sch. II, Para. 1**—*Arbitration—Award—Validity*—Ex parte *defendant not signing reference.*

Where one of the defendants who remained *ex parte* did not sign the reference to arbitration, the very f… ation of a reference to arbitration is absent and there is no valid submission An award on su…

G

———**Sch II, Para 1**—*Applicability—Execution proceedings.*

tion, which is embodied in the statement made by the parties counsel, was not supported … several parties who were interested, t… valid and could not give the Court ju… the matter to arbitration (*Mul…* WAHEED KHAN *v.* RAM BUX.

1938 A W.R II C. 691

———**Sch II, Para 1**—*Reference—One of defendants not joining in—Validity.*

A dispute was referred to arbitratic… defendants did not join in the referen… passed making the person joining … for the amount in dispute. He contended that the reference was *ab initio* void as the other person had not joined the reference.

Held, that the reference was not invalid by the other defendant not joining the reference and that the award was binding on the person party to the reference and

C. P. CODE (1908), Sch. II; Para. 15.

could not be interfered with in revision. (*Almond, J C.*) MIAN RAHMATULLAH *v.* SAYED ALAM SHAH. 177 I C 285 = 11 R. Pesh 19 = A.I.R 1938 Pesh 47.

… If controls O. 23, R. 1 … iding—Permission to … nt. *See* C. P CODE, … = 1937 A.L.J. 1163.

———**Sch. II, Para 8**—*Filing of award—Power of Court to extend time after award had been made.*

Under Para. 8 of Sch. II, C. P. Code, the Court has power to extend time for the filing of the award even after the award had actually been made. (*Costello and Panckridge, JJ.*) JETHALAL LAXMICHAND SHAH *v.* AMRITALAL OJHA. I.L.R. (1938) 2 Cal 482 = 42 C W N. 883.

———**Sch. II, para. 14 (c)**—*Scope—Objection to*

arbitration on reference in accordance with the provisions of the schedule can be filed or not. An award made in favour of an unregistered company can be filed on the application of that company, and such an application is not barred under S 69 (1) of the Partnership Act. The fact that it is in favour of an unregistered

175 I.C. 468 = 4 B R 587 = 10 R.P. 624 = 19 Pat L.T. 549 = A.I.R. 1938 Pat. 231.

———**Sch. II, Paras 15 (c) and 20**—*Objection that* … *not* … *osite* … *ourt* … *fore arbitrator—Separate suit for dissolution of partnership against applicant by opposite party—Decision on question whether parties were partners—If* res judicata.

The grounds of invalidity of an award contemplated in Para. 15 (*c*) refer to those matters which apparently go to the root of the award and matters

No such objection was raised before the arbitrator. The

the opposite party was a partner of the applicant operat-

a separate proceeding. Not having raised any objection before the arbitrator on the score of partnership to the claim put forward by the applicant, he could not afterwards challenge the award on the ground that it had been obtained by one partner against another for a specific sum.

C. P. CODE (1908), Sch. II, Para 16.

Held also, that the objection in Sch. II, Para. 20, C.P. Code, proceeding was not covered by Sch. II, Para. 15 (c) and so the mere fact that opposite party did not persist in its objection did not debar it from contesting the question in the suit for dissolution of partnership. There the question was directly and substantially in issue and on it hinged the decision of the whole case. (*Addison and Din Mahomed, JJ*) SARDAR

174 I C. 766=1938 O W.N. 475=1938 O L R 215= 10 R O 275=1938 O A 367= A.I.R 1938 Oudh 154.

——Sch II, Para 17—*Agreement to refer to arbitration—Some of the matters within jurisdiction of Revenue Court—Agreement, if can be filed*

An agreement for reference to arbitration cannot be filed in a Civil Court under Para 17, Sch II, C. P. Code, if some of the matters included therein are within

——Sch II, Paras. 17 and 19—*Agreement to refer dispute to arbitrators nominated by each party—One of*

tion of an arbitrator in case any arl nominated refuses to act, and one of arbitrators refuses to act, the Court ha make the necessary appointment so as to ment operative and effectual (*Addison Din Mohammad, J*) SALIG RAM BH- KISHEN SINGH AIR 1

—— Sch II, Para 17—*Refusal to ac ment to refer—Reference if could be made*

Though the arbitrators might have ref before the application for a reference unde Sch II C P. Code, yet the Court has Para 17 to make an order of reference *Verma JJ*) DATTA MAL v AMAR NATH

176 I C 404=11 R A 102=1938 A L J 544= 1938 A W R (H C) 431=1938 A L R. 615= A I R 1938 All 414

——Sch II, Para 18—*Application for stay—When to be made*

The provisions of Para 8, Sch. II of C P Code, are mandatory and an application under that section for stay should be made at the earliest

Where a suit was filed in August, were framed in December of that tion to stay the suit was put in only the instance of the Court

Held, that it cannot be said that the provisions of Para 18 of Sch. II of the C. P. Code have been complied with. (*Horwill, J.*) MAHOMED MOHIDEEN

C. P. CODE (1908), Sch II, Para. 20.

NACHIAR v. MAHOMED NAINA MARACAIR. 177 I C 440=1938 M W N 1124 (2)= 11 R M. 325=A I R 1938 Mad 205= (1938) 1 M L J. 38.

——Sch. II, Para. 18—*Application under—Statement in written statement setting up an agreement to refer to arbitration—If amounts to an application for stay.*

CHIAR v. MAHOMED NAINA MARA- 7 I C. 440=1938 M W N 1124 (2)= R M. 325=A I R 1938 Mad 205= (1938) 1 M L J. 38

——Sch II, Para 18—*Order adjourning suit sine die—Propriety—Proper order*

Where the Court refers the suit to arbitration in accordance with the agreement between parties to refer to arbitration under Para 18 of Sch. II, C P Code, an order adjourning the suit *sine die* is not proper and the proper order is to adjourn the suit for a definite period (*Horwill, J.*) MAHOMED MOHIDEEN NA-

N 1124 (2)= Mad 205= 1 M L J. 38.

——Sch II, Para 18—*Scope—Plea of arbitration clause in defence to suit—When to be taken—Contract*

(*Courtney Terrell C.J and Noor, J*) SECRETARY OF STATE v SURENDRA MOHAN LAHIRI 17 Pat 293= 1938 P W N. 138

——Sch II, Para 20—*Application to file award—Objections filed—Objector absent on second adjourned date—Order to proceed ex parte passed—Objector appearing before final order—Right to get ex parte pro-*

second adjourned date the objector was absent and *ex parte* proceedings were taken against him and the case was postponed to another date, and no replication w filed by the applicant up to that date, and the ob

C. P. CODE (1908), Sch. II, Para. 20.

A I.R. 1938 Lah. 486

——**Sch. II, Para 20**—*Construction and scope—Parties to suit pending in Revenue Court—Agreement of reference to arbitration without intervention of Court—Award—Application to Civil Court to file award—Jurisdiction of Civil Court to file award and pass decree.*

The right to agree to refer to an arbitration and to file an award under para. 20 of Sch. II, C. P. Code, is

ever might be the dec... suit before it, the awa... under para 20 of Sch... diction to deal with th... accordance with it. GANGA PRASAD SIN... 127 I C 967=... 1937 A...

——**Sch II, Para**... *tion outside Court—*... *tion Act, S. 17 (1) (b),*...

Paras. 20 and 21 of Sch. II, C. P. Code, which provide for the enforcement of awards in arbitrations made outside Court do not require that the awards should be registered before they can be file... though the awards might affect im... the value of Rs. 100 or upwards, ... fore not necessary in the case of su... of the Registration Act does not aff... proceedings of arbitrators are jud... and there is no reason to suppos... arbitrators is a document falling under S 17 (1) (b) of the Registration Act. (*Bennet, J.*) SHEO RAM *v.* RAM DATT. 175 I C 397=10 R A. 681=1938 R D. 31=1938 A L R. 434=1937 A L J. 1303=1937 A.W.R. 1218=A I.R 1938 All. 88.

——**Sch. II, Paras 20 and 21**—*Jurisdiction—Immovable property dealt with by award and parties to it within jurisdiction of Court—Business, subject matter of award carried on by parties outside Court's jurisdiction—If ousts jurisdiction of Court.*

Where all the immovable property dealt with by the ... the Court, and the Court has jurisdiction to entertain an application under Para. 20 of Sch II and to order the award to be filed under Para. 21. (*Kupchand Bilaram, Ag. J C. and Lobo, A J C.*) VISHINDAS KHUSHALDAS *v.* TEJUMAL KHUSHALDAS. 174 I C. 334=10 R S 250=A.I.R. 1938 Sind 59.

——**Sch II, Para 21**—*Award leaving undetermined part of the matters referred—If can be filed.*

An award which has admittedly left undetermined part of the matters referred to arbitration could not be filed under Para 21 of Sch. II, C. P. Code. (*Agarwala,*

COMPANY.

in such a manner that the fact of its having been given is indisputable. The essence of the paragraph is that there shall be a written permission as opposed to an oral permission, which would be susceptible of evidence of varying degrees of credibility in order to establish the necessary proof. What is required is certainty, and where there is a written record of facts which cannot be disputed, an unmistakable inference drawn from this written record that permission was given, fulfils the ... formal permission ... POONAMCHAND ... =177 I C 971= ... 1938 Nag. 309.

(*Beckett, J.*) RAM SUKH MAL *v.* HAR SAHAI MAL. 40 P L R 753=A.I R. 1938 Lah. 758.

CLUB—Expulsion of member—Power of Court to

Directors
Extraordinary general meeting.
Joint Hindu family
Shares.
Surrender of shares.
Winding up.

——*Articles of Association — Alteration — Powers of company—Special contract with company in terms of or embodying article—Power of company to evade by altering article.*

There is a very clear distinction between the relation of a shareholder to a company in regard to his shares ... y in regard to other ... ons contained in a ... n are revocable by ... may be made with the company in the terms of or embodying one or more of the Articles, and a company cannot break its contracts by altering its Articles. When dealing with contracts referring to revocable Articles, and especially with contracts between a member of the company and the company respecting his share, care must be taken not to assume that the contract involves as one of its terms an Article which is not to be altered. If the Court sees that a contract involves as one of its terms that an Article is not to be altered, then the company is not at liberty to alter that Article so as to break that contract.

COMPANY.

(*Reilly, C.J. and Abdul Ghani,*
ASIATIC GOVERNMENT SECURITY
CO., LTD 43 Mys H C R 396=

——*Articles of Association—Righ records given to members under— by rules.*

A power to regulate a right cannot be used to abrogate it. If a member has under the Articles of Association a contractual right of inspection of the minutes of the committee of the association, the right cannot be reduced by the power given under the Articles to the com

contractual right of inspection, just as a statutory right of inspection, can be exercised whatever the motive or interest of the member may be. (*Remfry, J*) RAMESWAR LAL *v.* CALCUTTA WHEAT AND SEED ASSOCIATION, LTD 42 C W.N 161=A I.R 1938 Cal. 89.

——*Articles of Association—Right of inspection of*

right would do In the case of a statutory right of inspection the Court will not imply a right to take copies unless the statutory right would otherwise be of no avail, or practically useless. The Court is bound by a stricter rule when a question of implying a term in a contract arises than in the case of a statute.

that the intention was to give a right to take copies of the minutes, the Articles must be construed to mean that the members, though given a right to inspect the minutes, could only take copies of them if that were permissible under their common law rights If the interests of members are sufficiently protected by the common law, there is no necessity for implying any greater rights in their contract. The members are not entitled under their common law right to take copies of the minutes if their interest is not different from that of their fellow members, and if they have no special object of their own (*Remfry, J*) RAMESWAR LAL *v* CALCUTTA WHEAT AND SEED ASSOCIATION, LTD 42 C W N 161=A I.R 1938 Cal. 89

the transaction There can be no ratification without an intention to ratify, and there can be no intention to ratify an illegal act without knowledge of the illegality (1869) 3 H L. 171, Foll.,

(*Lord Romer.*) PREMILA
NORTHERN INDIA, LTD

——*Directors — Powe dure*

The assets of a company cannot be disposed of by a resolution of the Directors only They can only be dis-

COMPANY.

company for satisfaction of its debts, is *ultra vires* and a transfer of property effected in pursuance of such resolution is ineffectual to pass any title to the transferee so as to entitle him to bring a suit under O. 21, R. 63, C. P. Code, more so when the formalities in respect of the deed of transfer provided by the Articles of Associa-
not been observed and the
iot by the Director so autho-
hose authority to act for the
(*Mosely and Dunkley, JJ.*)
A I R. 1938 Rang 447.

——*Extraordinary general meeting of shareholders—Notice of—Contents of.*

Notice of an extraordinary general meeting of the shareholders of a company must disclose all facts necessary to enable the shareholders to determine in his own interest whether or not he ought to attend the meeting. The pecuniary interest of a director in the matter of a
posed at the meeting is a
(*Reilly, C.J. and Abdul*
ASIATIC GOVERNMENT
SECURITY LIFE ASSURANCE CO, LTD.
43 Mys H C R 396=16 Mys L J. 448.

——*Joint Hindu family—Shares held by certificates standing in name of one member—If negotiable instruments—Right of other members.*

Share certificates are not negotiable instruments, so

no right or interest in them (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) AKKITHIMMIAH *v* RANGAPPA 16 Mys L J. 115=43 Mys H C R. 58

——*Shares—Forfeiture of—Strict fulfilment of conditions—Necessity for.*

In the matter of the forfeiture of shares, technicalities must be strictly observed. And it is not, merely the person whose shares are being forfeited who is entitled to insist upon the strict fulfilment of the conditions prescribed for forfeiture For, the forfeiture of shares may result in a permanent reduction of the capital of a company The creditors are therefore entitled to see that the power of forfeiting shares is exercised strictly. Where the power of a company to forfeit shares has
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INDIA, LTD (P C.)

——*Surrender of shares—Validity—Conditions*

Per Trail Judge, *Rupchand, A J C*—There can be

dum, except where shares are forfeited as it involves a reduction of capital, before this can be done the sanction of the Court must be obtained A surrender which

C. P. CODE (1908), Sch. II, Para. 20.

appeared on that date and asked for the setting aside of

ties to suit pending in Revenue Court—Agreement of reference to arbitration without intervention of Court—Award—Application to Civil Court to file award—Jurisdiction of Civil Court to file award and pass decree.

The right to agree to refer to an arbitration and to file an award under para. 20 of Sch. II, C. P. Code, is

reference being that the award would be effective whatever might be the decision of the Revenue Court in the suit before it, the awar
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127 I C 967=
1937 A I

A I R 1938 All. 46.

——**Sch. II, Paras. 20 and 21**—*Award in arbitration outside Court—Registration—Necessity—Registration Act, S. 17 (1) (b).*

Paras. 20 and 21 of Sch. II, C. P. Code, which provide for the enforcement of awards in arbitrations made outside Court do not require that the awards should be registered before they can be filed or enforced, even though the awards might affect immovable property of the value of Rs. 100 or upwards. Registration is therefore not necessary in the case of such an award. S. 17 of the Registration Act does not affect the matter. The proceedings of arbitrators are judicial in their nature and there is no reason to suppose that the award of arbitrators is a document falling under S. 17 (1) (b) of the Registration Act. (*Bennet, J.*) SHEO RAM v. RAM DATT. **175 I C 397=10 R A 681=1938 R D. 31=1938 A L.R. 434=1937 A L J. 1303=1937 A W.R 1218=A I.R 1938 All. 88.**

——**Sch. II, Paras 20 and 21**—*Jurisdiction—Immovable property dealt with by award and parties to it within jurisdiction of Court—Business, subject-matter of award carried on by parties outside Court's jurisdic-*

the Court, and the Court has jurisdiction to entertain an application under Para. 20 of Sch. II and to order the award to be filed under Para. 21. (*Rupchand Bilaram, Ag. J. C. and Lobo, A. J.C.*) VISHINDAS KHUSHALDAS v. TEJUMAL KHUSHALDAS. **174 I C. 334=10 R S 250=A I.R. 1938 Sind 59.**

——**Sch. II, Para. 21**—*Award leaving undetermined part of the matters referred—If can be filed.*

An award which has admittedly left undetermined part of the matters referred to arbitration could not be filed under Para. 21 of Sch. II, C. P. Code. (*Agarwala,*

COMPANY.

J.) BIJADHAR RAM v. RAJKARAN SINGH.

there shall be a written permission as opposed to an oral permission, which would be susceptible of evidence of varying degrees of credibility in order to establish the necessary proof. What is required is certainty, and where there is a written record of facts which cannot be disputed, an unmistakable inference drawn from this written record that permission was given, fulfils the
formal permission
POONAMCHAND
=177 I C 971=
A I R 1938 Nag. 309.

——**Appendix**—Forms in—Adherence to—Necessity.

decree in a suit for dissolution of partnership and the taking of partnership accounts, it is just as much applicable when the Court is asked to declare that a dissolution has taken place and an account is still required. (*Beckett, J.*) RAM SUKH MAL v. HAR SAHAI MAL. **40 P.L.R. 753=A.I.R 1938 Lah. 758**

CLUB—Expulsion of member—Power of Court to review—Resolution expelling member passed at meeting without discussion of reasons—Rule authorizing expulsion without assigning reasons—Effect of—Jurisdiction of Court to interfere—Principles of natural justice *See* JURISDICTION—CIVIL COURT. **40 Bom L R. 1213.**

COMPANY.

- **Articles of Association.**
- **Directors.**
- **Extraordinary general meeting.**
- **Joint Hindu family**
- **Shares.**
- **Surrender of shares.**
- **Winding up.**

——*Articles of Association—Alteration—Powers of company—Special contract with company in terms of or embodying article—Power of company to evade*

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the company in the terms of or embodying one or more of the Articles, and a company cannot break its contracts by altering its Articles. When dealing with contracts referring to revocable Articles, and especially with contracts between a member of the company and the company respecting his share, care must be taken not to assume that the contract involves as one of its terms an Article which is not to be altered. If the Court sees that a contract involves as one of its terms that an Article is not to be altered, then the company is not at liberty to alter that Article so as to break that contract,

COMPANY.

(*Reilly, C.J. and Abdul Ghani*, ... ASIATIC GOVERNMENT SECURITY CO., LTD 43 Mys H C R. 396=

——*Articles of Association—Righ records given to members under— by rules.*

A power to regulate a right cannot be used to abrogate it. If a member has under the Articles of Association a contractual right of inspection of the minutes of the committee of the association, the right cannot be reduced by the power given under the Articles to the committee to make rules, into a mere right to claim inspec-

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contractual right of inspection, just as a statutory right of inspection, can be exercised whatever the motive or interest of the member may be. (*Remfry, J*) RAMESWAR LAL *v.* CAL... TION, LTD ...

——*Articles* ...

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that the intention was to give a right to take copies of the minutes, the Articles must be construed to mean that the members, though given a right to inspect the minutes, could only take copies of them if that were permissible under their common law rights. If the interests of members are sufficiently protected by the common law, there is no necessity for implying any greater rights in their contract. The members are not entitled under their common law right to take copies of the minutes if their interest is not different from that of their fellow members, and if they have no special object of their own (*Remfry, J*) RAMESWAR LAL *v* CALCUTTA WHEAT AND SEED ASSOCIATION, LTD 42 C W N 161=A I.R 1938 Cal. 89

——*Directors—Act of directors* ultra vires*—Ratifica-*

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the transaction There can be no ratification without an intention to ratify, and there can be no intention to ratify an illegal act without knowledge of the illegality (1869) 3 H L 171, Foll., ...

(*Lord Romer.*) PREMILA D... NORTHERN INDIA, LTD A...

——*Directors — Power* ... *dure*

The assets of a company cannot be disposed of by a resolution of the Directors only. They can only be dis

COMPANY.

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company for satisfaction of its debts, is *ultra vires* and a transfer of property effected in pursuance of such resolution is ineffectual to pass any title to the transferee so as to entitle him to bring a suit under O. 21, R. 63, C. P. Code, more so when the formalities in respect of the deed of transfer provided by the Articles of Association of the company have not been observed and the ... so autho- act for the ... *nkley, JJ.*) ... Rang 447.

——*Extraordinary general meeting of shareholders —Notice of—Contents of.*

Notice of an extraordinary general meeting of the ... all facts neces- ... une in his own ... the meeting. ... he matter of a ... posed at the meeting is a (*Reilly, C.J. and Abdul* ... ASIATIC GOVERNMENT CO, LTD ... 396=16 Mys L J. 448.

Shares held by certificates ... *her—If negotiable instru ments—Right of other members* ...

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no right or interest in them (*Abdul Ghani and Singaravelu Mudaliar, JJ*) AKKITHIMMIAH *v* RANGAPPA. 16 Mys L J. 115=43 Mys H C R 58

——*Shares—Forfeiture of—Strict fulfilment of conditions—Necessity for.*

In the matter of the forfeiture of shares, technicalities must be strictly observed And it is not, merely the person whose shares are being forfeited who is entitled to insist upon the strict fulfilment of the conditions prescribed for forfeiture. For, the forfeiture of shares may result in a permanent reduction of the capital of a company. The creditors are therefore entitled to see that the power of forfeiting shares is exercised strictly. Where the power of a company to forfeit shares has arisen, the Articles of Association usually contain provi- ... t may ... ection ... may ... cap- ... But ... or its ... ssess, ... pay ... *mer*) ... HERN ... (P C.).

——*Surrender of shares—Validity—Conditions*

Per Trail Judge, *Rupchand, A J C*—There can be

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dom, except where shares are forfeited as it involves a reduction of capital, before this can be done the sanct of the Court must be obtained A surrender wh

COMPANY.

the effect of releasing a shareholder from further liability in respect of his shares is equivalent to a purchase of the shares of the company and is illegal, and null void. Such a surrender can only be supported in circumstances which would justify a forfeiture of shares. (*Mehta and Lobo, JJ.*) VAZIRMAL KEWALRAM v. MAKRAN COAST STEAM NAVIGATION CO., LTD. 32 S L R. 167=177 I C 577=11 R S 65=A I R. 1938 Sind 187.

——*Winding up—Call order—Defendant holding share in company registered in Indian State and residing in British India—Call order made against him by State Liquidation Court—Enforcibility.*

In a personal action, a decree pronounced by a Court of a foreign state *in absentem*, the defendant not having submitted to its authority, is by international law a nullity. Where the defendant who is a shareholder in a company registered in an Indian State and is a resident of British India, does not appear before the State Liquidation Court, before which the liquidation proceedings in respect of the company are started, and does not submit to the jurisdiction of the Liquidation Court, a call order made against him by the Liquidation Court, in absence of an express agreement in the Articles of Association that the disputes with the shareholders should be settled by the State Court, is without jurisdiction and cannot be enforced as such in British India. It is necessary that the liquidator suing the defendant in [illegible] facts to establi[illegible] order to allow [illegible] for the particu[illegible] mere fact that [illegible] to such proo[illegible] MODERN CHE[illegible] MOHAN NATH [illegible]

COMPANIE[illegible] panies—Policy holder—Right to apply for winding up *See* LIFE INSURANCE COMPANIES ACT, S. 22 (a) 40 Bom L.R 52.

COMPANIES ACT (VII OF 1913), S 4—*Applicability—Joint family business concern.*

A trading association to be within S. 4 of the Companies Act [illegible]

[illegible] not, therefore, come within the scope of that section. (*Mitter and Biswas, JJ.*) NIBARAN CHANDRA SHAHA v. LALIT [illegible]

——S [illegible] mum num[illegible] mum late[illegible] S. 4 of [illegible] governs [illegible] association [illegible] association [illegible] its format[illegible] ten in nu[illegible] twenty in other businesses, but if the number increases later on and exceeds the maximum allowable, the association becomes an illegal one, if no registration is effected. (*Mitter and Biswas, JJ.*) [illegible]DRA SHAHA v. LALIT MOHAN [illegible] I L [illegible]

——S 4—*Suit by unregiste[illegible] tainability.*

COMPANIES ACT (1913), S. 30.

A suit by an association which is an illegal one by reason of the fact of [illegible]

——S. 4—*Unregistered association—Beneficial interest of members.*

The members of a partnership or company or association hit by S. 4 of the Companies Act can have beneficial interest in property. (*Mitter and Biswas, JJ.*) NIBARAN CHANDRA SHAHA v. LALIT MOHAN BRINDABAN SHAHA. I L R. (1938) 2 Cal 568.

——S. 4 (2)—*Scope—Partnership of less than twenty—Subsequent increase of members to over twenty and conversion into joint stock Company—Member of original firm not aware of increase of members or change and not allotted any share in new firm—New firm not registered—Suit by member for declaration of dissolution of firm and for accounts—If barred.*

Where a firm consisting of less than twenty partners is subsequently converted into a joint-stock company with additional partners so as to consist of more than twenty partners, it must be registered under the Companies Act; if it is not so registered, no suit can be maintained in respect of that partnership. But when a person who was a partner in the firm and was, as such, entitled to a share of the profits when the membership of the firm was below twenty, is not allotted any share in [illegible]

175 I C 290=10 R.M. 764=A I R. 1938 Mad 151.

——Ss 30 and 184—*Signatories to memorandum of association—Liability to be included in list of contributories—Actual entry in register of shares or actual allotment of shares—If condition precedent.*

It is well settled that the signatories to the memorandum of association of a company become the first [illegible]

[illegible] register nor the allotment of shares is a condition precedent. Each subscriber at once by subscribing irrevocably [illegible]

——S 30 (2)—*Scope—Non compliance—Effect of.*

Per Trial Judge, *Rupchand A. J. C.*—S. 30 (2) of the companies Act merely lays down a rule of procedure [illegible]

[illegible] to have agreed to have purchased and to pay for. A

COMPANIES ACT (1913), S. 55.

director is bound to see if the allotment of shares is made. He cannot avoid his liability to pay for the shares by pleading his own d ... making the allotment of shares ... *Lobo, JJ*) VAZIRMAL KEWALR... STEAM NAVIGATION CO., LTD

177 I.C 577 = 11 R.S 65 = ...

ing to a reduction of the share capital of the company. ...

decision has been arrived at ... fully cognizant of their neces... custodians of their interests a... slow to interfere. (*Mir Ahmad* ... TRICAL ENGINEERING AND C... *In re.* 177 I C.

——S 76 (1)—*Constructio* ...

shall be a general meeting held once at least ... year, *i.e.*, one separate and distinct meeting eve... It does not mean that the same meeting can go... several years being held once in each year.

(*Burn, J*) SREE MEENAKSHI MILLS CO, LTD *v.* ASST. REGISTRAR OF JOINT STOCK COMPANIES, MADURA 1938 M W N 608 = 11 R M 358 (1) = 177 I C 600 = 39 Cr L J 907 (1) = 47 L W 635 = A I R 1938 Mad 640 = (1938) 1 M L J 856

——S 81—*Resolution relating to question of reduction of capital—Validity—Amendment of section after adjournment of meeting—Effect on procedure*

A notice was issued on 21st December, 1936 for the purpose of calling an ordinary general meeting of the shareholders of a private limited liability company on 30th December, 1936 for deciding the question of reducing the capital and assets of the company. At the meeting held on 30th December, 1936, eight out of the nine shareholders of the company were present. The ninth shareholder had died before the notice was issued and his legal representatives had not obtained succession certificate to entitle them to take part in the proceedings. An objection having been raised as to circulation of the balance sheet, the meeting was adjourned to 21st February 1937. Another notice was issued on 6th February, 1937, to convene the adjourned

COMPANIES ACT (1913), S. 91-A.

meeting on 21st February, 1937. In this notice the meeting was designated as an extraordinary general meeting of the shareholders of the company. The same ...

proposals. Another meeting of shareholders held on ...

——S 91-A (1) ... —*Contract not made*

Act is not limited to ... of the directors but ... tracts were not made at such a meeting (*Jack and Patterson, JJ*) RABINDRANATH MITRA *v* EMPEROR 42 C W N 533 = 176 I C 108 = 11 R C 39 = 39 Cr L J 687 (2) = A I.R 1938 Cal 440

——S. 91-A (1)—*Disclosure of interest—Proof—Letter by purchasing director to chairman—Sufficiency*

A letter written by the purchasing director to the chairman of the Board of Directors who merely signed it as noted, does not prove that the disclosure of the director's interest was made at any meeting of the directors as required by S 91 A (1) of the Companies Act, when it is not referred to in the minutes of any of the meetings (*Jack and Patterson, JJ*) RABINDRANATH MITRA *v* EMPEROR 42 C W N 533 = 176 I C 108 = 11 R C 39 = 39 Cr L J 687 (2) = A I R 1938 Cal 440.

——S 91-A (1), Proviso—*Petty purchases by director—Disclosure of interest—If necessary*

Petty purchases by a director of a company from a firm in which he has an interest, are covered by the proviso to S. 91 A (1) of the Companies Act, and the director's interest should be disclosed in the manner provided for therein. (*Jack and Patterson, J*

RABINDRA NATH MITRA v. EMPEROR.
42 C.W.N. 533 = 176 I.C. 108 = 11 R C. 39 = 39 Cr L J. 687 (2) = A.I.R. 1938 Cal 440

——S. 91 B—*Transaction entered into by interested director—Voidab*

Where a direc
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and owes a duty which conflicts with his duty to the company of which he is the director. It is immaterial whether the conflicting interest belongs to him beneficially or as a trustee for others. S. 91 B would not however deprive of the benefit of his contract with the company a third party who had no notice of the defect in the director's authority. Such a person would be entitled to assume that the internal management of the company is properly conducted But if the third party

P company as security for debt owed really by *M T* company and obtained an equitable mortgage over *P's* property by two indentures The *M T* company which was putting up *P's* property as security, held almost all the shares in *P* company and the directors of *P* company had for years been directors of *M T* company and these facts were known to directors of the *S* company in course of their business. Winding up proceedings having been

When to be exercised—Application under S. 183 (5) for removal from list of contributories—If can be allowed.

Where the prospectus issued by a company is a false and misleading document and contained untrue state

The principal tests as to whether a charge is a floating one are (1) Is it a charge upon all or a certain class of assets, present or future? (2) Would the assets charged in the ordinary course of business be changed from time

to time? (3) Has the company power until such step is taken by the charges to carry on the business of the company in the ordinary way? Where a clause in an agreement was 'that the amount of security money will
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registered is void.
LAW AND INDRA
AL LIQUIDATORS,
W R. (H C.) 553 =
1938 A L R 867 =
A.I.R. 1938 All. 574.

——S. 152—*One of parties to agreement, a company—No specific reference to Arbitration Act—Latter, if applies.*

A company under the Companies Act stands in the Punjab on no different footing than a private individual governed by Punjab Act I of 1911. Therefore if an agreement between the parties of which one is a com-
to the Arbitration Act,
ply to the arbitration
Bhide, J.) CHANDU

A I R 1938 Lah. 827.

——S. 152—*References to arbitration by limited liability companies—Arbitration Act alone—If applies.*

The word 'may' after the words 'a company' in the beginning of S. 152 does not go with the sentence 'in accordance with the Indian Arbitration Act, 1899', but with the words 'refer to arbitration'. Again the existence of the words 'in accordance with the Indian Arbitration Act 1899' in Cl (1) of S 152 is an indication that the
be *de rigueur* that every
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party. Limited liability

PADAM LAL. 1?? I.C. 659 = 11 R Pesh 30 = A I R. 1938 Pesh 54.

——S 153—*Depositors who have obtained decrees—If form separate class from ordinary depositors.*

Per R K Mukherjea J—Depositors with a loan

KRISHNA NATH SEN v DINAJPUR LOAN OFFICE, LTD. I.L.R. (1938) 2 Cal 30 = A I R. 1938 Cal. 337.

——S. 153—*Depositor who has obtained decree and depositor who has not—If belong to same class.*

COMPANIES ACT (1913), S. 153.

A depositor who has obtained a d... company in respect of the amount of ... different position from those persons w... is entitled to be considered as belong... class when the provisions of S 153 of the Companies Act are sought to be enforced. 40 C W.N 1104, Ref. to. (*Derbyshire, C. J. and Mukherjea, J.*) RAJSHAHI BANKING AND TRADING CORPORATION, LTD. *v.* PULIN BEHARI MUKHERJEE. 42 C.W N. 610.

——S. 153—*Petition under—Winding up petition filed—Hearing of—If barred—Scheme not placed before shareholders and cred*...

A petition was pre... under S 153 of the... refer a scheme, whic... holders and creditors for their consideration, but a wind-...

CALICUT BANK, LTD, *In re* 48 L W. 648= 1938 M W.N 1082=(1938) 2 M.L J 812

——S 153—*Scheme confirmed by Court—Variation—Powers of creditors and shareholders.*

Upon confirmation by the Court of a scheme of ...

or its directors to vary the scheme under the guise of a ... compromise... departure... acquiescenc... *Romer*) THERN IN...

——S.1... *Court, if c*...

A schem... Court unde... nouncemen... against a k... sanctioned...

——S. 153—*Scheme, when takes effect—Depositor*...

... but before it is ... scheme and is not ... e into execution ... *J.*) RAJSHAHI ... RATION, LTD *v.* PULIN BEHARI MUKHERJEE 42 C.W.N. 610.

——S. 156 (1) (1)—*Past member—Director of company ceasing to be director—If ceases to be member also.*

A director of a company who ceases to be a director does not thereby cease to be a member of the company. He cannot be held to be a "past member" of the com-...

A I.R. 1938 Sind 187.

——S. 158—'*Contributory*'—*Holder of fully paid up* ...*ided.*

...ntributory' as defined in S. 158 of the ... includes a shareholder who holds fully ... only. (*Harries, J.*) PARSHOTTAM ... AL LIQUIDATOR OF THE GORKHPUR ELECTRIC SUPPLY CO., LTD 1938 A.W.R. (H C.) 621=1938 A L J 925= 1938 A.L R. 860=178 I C. 458= A.I.R. 1938 All. 613.

——S. 160—Scope—Application for order for ...

A I R 1938 Bom. 182

——S.171—*Appeal or application for revision arising out of action by company—Leave of liquidation Court*...

——S 186 (2)—*Contrib*... *of limited company, if entitled to set off.*

... nies Act ... y when ... hatsoe ... ited,

COMPANIES ACT (1913), S. 202.

that he has no such right of set-off, if the company be limited. (*Harries, J.*) PARSHOTTAM DAS *v* OFFICIAL [illegible]

to Hig [illegible] *holding* [illegible] *Appeal* [illegible]

S. 202 is very wide in its terms [illegible] against any order in the matter of [illegible] company, provided such order finall[illegible] between the parties or deprives the appellant of a substantial and imp[illegible] and interlocutor[illegible] lays down that [illegible] etc, merely reg[illegible] the presentation [illegible] petition under [illegible] against certain persons and the High Court passes an order holding the application to be maintainable, its *order is not of a merely formal or ministerial character,* but finally decides points between the parties relating to substantial and important rights Such an order is appealable under S 202 and a party aggrieved by the order is entitled to appeal to a Division Bench of the High Court under Cl 10 of the Letters Patent (*Young, C.J. and Tekchand, J.*) MULK RAJ *v.* OFFICIAL LIQUIDATOR, PEOPLES BANK.

A I R 1938 Lah 658

——S 217—*Sale by liquidator with the consent of the mortgagee—No waiver of security—Liquidation expenses—Priority.*

Where a mortgagee of the machinery of [illegible] agreed to the liquidator selling the machinery [illegible] was no waiver of the security, on a quest[illegible] whether the landlord of the premises in [illegible] machinery was kept pending sale negotiation [illegible] tled to a priority of payment in respect of the rent due as against the mortgagee, it was held that it was no doubt true that the Companies Act provided that expenses incurred in winding up shall be payable out of the assets in priority to all other claims subject to the rights of secured creditors if any and that if the mortgagee had chosen to enforce his security personally, he would have been entitled to satisfaction *before any expenses of* liquidation were paid, but as he had invoked the assistance of the liquidator he must bear the e[illegible] dental to the assistance he had received [illegible] was one of such expenses. (*Weston, J* [illegible]) SINGHJI *v* BALLABH DAS. **1938 A** [illegible] **100.**

——S 218—*Scope—Creditor's right to ask for compulsory winding up where company is in voluntary liquidation—V*[illegible]*luntary.*

The present S 218 of [illegible] any creditor who would [illegible] pulsory order for windi[illegible] for such an order though [illegible] such application in the [illegible] voluntarily. There is no section in the Act which enables a voluntary liquidator to ask for an order to compulsorily wind up the company. (*Harries, J*) SHRI GOPAL CHANDRA *v* NARAIN DAS.

1938 A W R (H C.) 576 = 1938 A L J 898 = A I R. 1938 All 623

——S 229—*Deposits by employees by way of security—Nature of—Trust, if created—Liquidation—Preferential right of such depositors—Tracing*

Where deposits were made to a bank by the employees or on their behalf as security for their faithful and

COMPANIES ACT (1913), S. 235.

honest service and interest was also payable on such deposits, on a question whether such depositors were [illegible] a liquidation of the bank to a preferential [illegible] it the deposits formed part and parcel of the [illegible] transaction and the moneys should have [illegible] from whatever source they might come, the tracing of [illegible] principle of law to [illegible]

1938 M W.N. 7 = 47 L W. 100 — 178 I C 428 = A I R 1938 Mad. 651.

——S. 230—*Creditor's right to preferential treatment in respect of money deposited as security—Trust, if created.*

Where as part of the agreement of the appointment of certain persons as selling agents they deposited with a company certain amount, which was to carry interest and which was to be re paid on the termination of the period for which those persons acted as selling agents, and such persons applied for the return as per their agreement and not succeeding in getting it applied for the winding up of the company with which they had contracted and contended that they are entitled to preferential payment, it was held that the agreement be-[illegible]

SUGAR WORKS,

1938 A [illegible]

1938 [illegible]

——S. 230 (1) (c) and (2)—*Workmen's wages—Rule of priority as to—Extent.*

Under the provisions of S. 230 (1) (c) and (2) of the Companies Act, the wages of workmen have a priority of claim over the claims of debenture holders under any [illegible] the company. (*Bennet, A C.* [illegible]) [illegible]JRAJ BHAN

[illegible] R (H C) 591 = [illegible] = 178 I C. 441 =

A I R. 1938 All. 609

——S 235—*Application under—Provisions of Civil* [illegible]

[illegible] 235, Com[illegible] proceed[illegible] but the [illegible] inapplica[illegible] [illegible]ess provisions for its contents and the formalities connected with it are provided for by the Companies Act and the rules made thereunder. (*Young, C. J and Tekchand, J.*) MULK RAJ *v.* OFFICIAL LIQUIDATOR PEOPLES BANK **A I R 1938 Lah. 658.**

——S. 235—*Petition under—Contents.*

It is not necessary in a petition presented to the High Court under S. 235 to fully and adequately set out the particulars on which the claim is based. Neither S. 235 nor the rules framed thereunder require that the sum claimed by the liquidator from a director or officer of

COMPANIES ACT (1913), S. 235.

COMPROMISE.

1938 A.W.R (H.C) 741

the terms that he had not paid three consecutive instal

——S. 235—*Proceedings against directors for mis-*

COMPROMISE.

Cl 7 of the compromise dealt with the third set of properties, namely, acquisitions that might be made by the widow out of the income of the estate in her hands or by other means, and it was provided by Cl. 7, that these properties should not merely belong to the widow exclusively, with powers of alienation, etc., but that after her death they should belong to the widow's *own heirs* and that the plaintiff and his heirs should have no right or claim in respect thereof.

Held, on a construction of the compromise, (1) that what was given to the widow under Cls. 1 to 4, in respect of the Zamindari was a strict life estate and not an ordinary widow's estate, and that the plaintiff took a vested remainder as regards the same; (2) that Cl. 6 …

gift etc., and it was not reasonable to say that the words did not connote what their natural meaning undoubtedly conveyed; (4) that it was not fair to allow the antecedent claims of the parties in the suit to control the construction of the clear words employed in Cl. 6; (5) that the words "her heirs" in Cl 6 could not read as mean- …

——*Enforceability by separate suit—Compromise of suit—Decree—Compromise not incorporated—Separate suit on compromise, if lies.*

…

——*Legal practitioner—Authority.*

In the absence of a power of attorney a pleader is not …

…

Mahomedan parties—Custom of adoption—Property both in British India and Native State—Adoption declared valid in Court in Native State—Dispute in respect of property in British India—Law applicable—English rule of lex loci—*Applicability — Bombay Regulation IV of* 1827.

A Mahomedan lady died leaving … British India and in a Native State. … tion set up by the adopted son was de… by the Court in the Native State, a…

CONTEMPT OF COURT.

or rather of Bombay Presidency; for it is enacted in Bombay Regulation IV of 1827, that the law to be observed in the trial of suits shall be Acts of Parliament, etc., and in the absence of such Acts and Regulations, the usage of the country in which the suit has arisen. It follows that the personal law of the adopted son can only be taken into consideration in the absence of an usage of the country in which the suit has arisen (*i.e.*) British India. (*Barlee and Macklin, JJ.*) AYUBSHA v. BABALAL. I L.R. (1938) Bom 150= 39 Bom L R 1324=173 I.C 801= 10 R B. 384=A.I R. 1938 Bom 111

——Parsi resident in Baroda dying having immovable properties in British India—Succession to such …

… *interest through Government—Government, if guilty of contempt.*

The Government granted certain lease of quarrying rights to *A*. *A* took possession of the quarries. In a dispute concerning lease the Government and its servants were restrained by an injunction from distur- …

… the order of the Court, and not for the Government, who was not in actual possession to eject *B*. The duty of the Government was to leave those who claimed entitled to the possession of the soil to take the appro- …

…, as Government was not liable, *B*, who … rest through it, could also not be held … dience. 16 Pat. 159=A.I R. 1937 Pat 66 (S B.), reversed. (*Lord Porter.*) …UCHWAR LIME AND STONE CO, LTD. 1938 P.W N 895=19 Pat L T 867=178 I C. 490= A.I R. 1938 P. C 295 (P C)

… jurisdiction—Powers … it aiding insolvent in … y. *See* PRESIDENCY …

… 45 L W 462=(1938) 2 M L J. 609.

——*Power of Court to commit—Contempt.*

Persons who are not parties to the proceedings can be proceeded against in contempt if they at the investigation of the insolvent refuse to vacate possession of the properties of the insolvent as ordered by the Court.

…

CONTEMPT OF COURT.

(*Lord Porter.*) ... STONE CO, LTD ...

——*What am*... *Court's order.*

A Guzerati person applied for restoration of his minor boy from an Anglo Indian lady who looked after him for a long time with the father's concurrence In a previous proceeding, the father was appointed as the guardian of the boy and the father was ordered to have the custody of his boy and was to arrange to take the child for a change The father made the arrangement but the lady refused to deliver the child to its father in spite of many requests The lady had acted in such a manner as to indicate clearly that she wanted to have an absolute control over the child in derogation of the rights of the father. Any amicable settlement suggested by the father was refused by her

Held, that the lady was guilty of
(*McNair, J.*) RANJANI KANTA PADIA, *In* ·
174 I C. 785=39 Cr L J 466=10 R ·
A I R 193 ·

——*Pending case—Newspaper article—Allegation of evidence in contemplated prosecution being unreliable and obtained by unfair means—Suggestion of improper means to obtain admissions from accused—Effect of—If amounts to contempt of Court.*

It is well settled that any act done or writing published which is calculated to interfere with or obstruct the due course of justice or the legal process of the Court is contempt of Court, although the Court will not take action for contempt unless it thinks that the conduct of the party in question is calculated seriously to interfere ...

... calculated to interfere with the due course of justice, and amounts to contempt of Court, as such allegations introduce at once into the trial an element of prejudice against the prosecution evidence. (*Beaumont, C.J. and Wassoodew, J*) GOVERNMENT PLEADER, BOMBAY v. SHANKAR DATTATRAYA JAVADEKAR.
40 Bom L R. 73

——*Pending case—Newspaper headlines—Publication of complaint with comments.*

Where a newspaper published with scare headlines ...

CONTEMPT OF COURT.

... misrepresentations directed ...on, especially when they are ...ed or contempt, is liable to ... because it may, in the case ...o discontinue the action from ... may cause the defendant to come to a compromise which he otherwise would not come to, for a like reason. The fact that the trial Judge would not be affected by the article has no bearing on the matter. An article published in a newspaper stated the defendants' case and inferred that it was true. It then accused the plaintiff of having ruined the defendants and of having concocted false criminal cases against them, and it further accused the plaintiff of using his influence maliciously and to the detriment of the defendants. The article was published pending a suit instituted by the plaintiff against the defendants.

Held, that the article constituted grave contempt, and that the fact that the article closed with an appeal for ...

VENKATAGIRI v RAMA NAIDU
I L R. (1938) Mad 545=1937 M W N 1193=
173 I C. 455=10 R M 589=39 Cr L J 328=
48 L W. 444 (2)=A.I R 1938 Mad 248=
(1938) 2 M.L J. 81.

——*Pending proceedings—Statements published—Grave offence—Punishable even if apology were tendered.*

(1) Where the contempt of Court is of a very grave nature, the party in contempt may be punished in spite of apology tendered. (2) There is nothing more incumbent upon Courts of justice than to preserve their pro...

J.) BAPAYYA NAIDU v. BAPAYYA.
1938 M W.N 1008=A I R 1938 Mad. 975=
(1938) 2 M L J. 520.

——*Pending suit—Resolution at public meeting making accusations against party—If amounts to contempt.*

Where during the pendency of a suit instituted for a declaration that certain land claimed by the defendant is a public pathway, a resolution is passed at a public meeting protesting against the attempts of the def...

CONTEMPT OF COURT.

——*Scandalising the Court—What amounts to—General attack hostile to utility of Courts of justice—Process for contempt—If justified.*

Any act done or writing published which is calculated to bring a Court or a Judge into contempt or to lower his authority is contempt of Court. It is a class of contempt usually known as "scandalising the Court", the principle on which the Court proceeds in taking notice of this class of contempt is based on the interest of the public and not on the interest of the particular Court or Judge who is attacked. Where attacks are made on the personal character of a Judge, or where base or improper motives in the decision of a case are attributed to a Judge, the process of the Court should be used, but the process of contempt for scandalising the Court is one which should be sparingly used. A general expression of opinion hostile to the utility of Courts of Justice, without any attack on any particular Judge or comment on any particular case, is not likely to affect the public and need not disturb the equanimity of Judges, and does not amount to such a contempt of Court as should be

contempt.

Where a suit was concluded by a decree of Court embodying the terms of settlement between the parties one of which was an undertaking given by the defendant not to dispose of his properties until the decree was fully satisfied, and the defendant

before the satisfaction of the de

Held, that the breach of the

Court amounted to contempt

breach was not so trivial a matter as to be beneath the dignity of the Court to notice or punish it (*Panckridge, J.*) HARI CHARAN DEY *v.* RANJIT KUMAR.

42 C.W.N. 203

tempt of Courts Act is that where there

provision in the Penal Code for punishing a contempt

Bailment.
Breach
Concluded agreement.
Construction.
Currency.
Enforceability.
Executory agreements.
Formation.
Hire purchase agreement.
Hypothecation.
Implied obligation to repay.
Part performance.
Penalty.

CONTRACT.

Prohibition by statute.
Ratification.
Restitution.
Sale.
Special contract.
Stock exchange
Strangers' right to sue.
Third party.
Validity.
Variation.
Void and voidable.

——Bailment—Essentials of. *See* MYSORE CITY MUNICIPALITIES ACT, S. 41 (7).

16 Mys L J. 368.

——Breach—Damages—Rule as to mitigation of damages—Applicability to contract of service. *See* PRINCIPAL AND AGENT—AGENT'S RIGHT TO SALARY.

(1938) 1 M L J. 857.

——*Concluded agreement—Mandi contract with pacca ahrti of Bombay.*

order to *B* at Bombay, who entered into a forward contract of April-May delivery at the current market rate, and the next day he wired back to the agent that the order had been placed at Rs. 208 12 0 per candy at a (mandi) premium of Rs 7-8 0. Three days later, the

tion to another party at a loss.

Held, that there was no question of an "offer" by *A* and its "acceptance" by *B*. There was a completed contract between the parties and *A* was liable to pay the

——*Construction—Contract of mother and minor*

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contracts and she was promising to stand in the role of one who should use her influence with her daughter to enable the company's expectations in respect of the daughter to be realized. The company advanced money to be adjusted against her future earnings The daughter failed to carry out the contract:

Held, (1) that the minor daughter was not liable under the contract but her mother was liable on her

measure of damages. (*Roberts, C.J. and Dunkley, J.*)

CONTRACT.

DAW NYUN v. MAUNG NYI PU. A.I.R. 1938 Rang. 359.

——*Construction—Contract of service entered into in London—Employment in New Zealand on remuneration of seven hundred pounds sterling per year—Payment, if to be made according to English or New Zealand currency.*

An agreement was entered into between the respon-

lish or the New Zealand value of the pound.

Held, that the question was purely one of construction of the particular contract. The word 'sterling' was to be construed as signifying English currency, in contrast with the currencies of other co

volume as his property and also reserved to himself all

177 I.C 341=11 R L 300=

——*Construction —Intention contracts for supply of goods—I part of a series*

The plaintiff and defendant

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PRASAD SHEO PRASAD BHAGAT. 1937 A L J. 1250

——*Construction — Sale of goods—Payment to be made in cash in exchange for delivery order on seller for Mate's receipts—Stipulation for delivery alongsid*

CONTRACT.

export vessel in port—Goods delivered to ship and Mate's receipt taken by seller in buyer's name—Bills of lading, issued to buyer without Mate's receipt but on letter of guarantee by buyer— Non-payment of price—Buyer endorsing bills of lading—Delivery to endorsee—Claim by seller to damages against shipping company—Maintainability—Property—When passes.

On 4-5-1926, the respondents, who were brokers and

contained, *inter alia*, the following material terms: (1) "Payments to be made in cash in exchange for delivery order on sellers or for Railway receipts or for Dock receipts or Mate's receipts (which Dock receipts or

appellants, who received the goods and issued Mate's receipts as presented to them for signature by the mills. The receipts recited that the goods mentioned therein were received for conveyance to Kobe from the Export Company. The receipts were handed over to the mills'

a fews days later against payment and tendered them to

There-
pellants
Export
d. But
bills of

appellants.

Held, (1) that the property in the goods sold passed when the goods were appropriated by delivery alongside in implement of the contracts, (2) that the sel

CONTRACT.

had parted with property and possession after delivery alongside, and had nothing left except the equitable charge which could be enforced only against the buyer or persons taking with notice of the equity; (3) that there was nothing left in the sellers-respondents in the nature of a common law or possessory lien which would support an action in conversion or trespass, (4) that the appellants in issuing bills of lading without Mate's receipts did not commit any wrong as against the respondents and were not guilty of any breach of duty, (5)

could give the respondents any right to damages in trespass or conversion, and (6) that the equitable lien or personal license which was all that remained with the respondents under the contract when the goods were delivered to the ship, did not affect the transferee of the bills of lading so as to found a claim for conversion, though it might found a claim for breach of

How determined.

The currency in any particular country must be determined by the law of that country and that law is natu-

mined. (*Lord Wright.*) OTTOMAN BANK OF NICOSIA *v.* OHANES CHAKARIAN.
172 I C 786=10 R P C.141=
A.I.R 1938 P.C. 26 (P C.).

——*Enforceability—Legal and illegal objects—Duty of Courts.*

Per *Vivian Bose, J.*—Where a transaction consists of two separate considerations for consisting of legal and illegal parts is separable from unlawful, it is al effect to the lawful and reject the u is what the Courts are bound transaction is prohibited by statute or unless it involves

deed.

It is well settled that where parties enter into an executory agreement which is deed afterwards to be executed, contract is to be found in the d merged in the deed. The mc perhaps of this merger is a contract for the sale of land followed by conveyance on com visions of the contract which the be performed by the conveyance conveyance, and all the rights of t tion thereto are thereby satisfie

CONTRACT.

doubt, be provisions of the contract which from their nature or from the terms of the contract, survive after completion. (*Lord Russell.*) THE KNIGHT SUGAR CO., LTD. *v.* ALBERTA RAILWAY AND IRRIGATION CO.
10 R P.C 192=173 I.C. 88 (P C).

——*Formation—Offer and acceptance—Counter offer —If amounts to rejection of offer.*

Where an offer containing certain conditions has been made to a party and that party by adding to the conditions makes a counter-offer, the counter offer made to him.
RAO GIRDHARI
1938 Lah 341.

ptance—Letter to member offering new shares to him and on his renunciation, to his nominee—Renunciation by member and acceptance by nominee—Contract if concluded.

A letter addressed to a member of a company offered him new shares and in the event of his renouncing, to his nominee. The member renounced and his nominee accepted them.

contract of sale.

Where the plaintiff accepts the offer of the defendant to sell but seeks to add a further term, which the defendant refused to consider at the same time made, and insaction of the defen-
RALS, LTD.
177 I C. 624=11 R C 258=
A.I.R. 1938 Cal. 343.

——*Hire agreement—Fitness of article for purpose required—Implied warranty.*

As a general rule, if a person contracts for the hire and use of a specific article, there is no implied warranty by the owner that it is fit for the purpose for

177 I C. 540=11 R C 262=
A.I.R. 1938 Cal. 248.

ture of — Con-

, on account of The terms used and equivocal that they are calculated to elude an attempt to gather their intention from them. A hire purchase agreement be described as a ng and agreement ent of hypothe- bottom may well be a contract of sale on credit. The main point in

CONTRACT.

appropriate relief. The question whether or not the agreement which wears the garb of hire purchase agreement transfers by its own force the ownership from one party to the other is one of great moment for the purposes of determining the nature and extent of the remedy that is available to the aggrieved party. If it is found that the agreement is a contract of sale with the condition of retarded payment of the price by instalments, the property in the chattel woul[illegible] ostensible hirer. If on the other hand [illegible] is one of hiring, albeit coupled with an [illegible] chase, the property will not pass to the hi[illegible] be treated only as a bailee until he exercises his option after having fulfilled the required conditions. In the former case the owner who has parted with his ownership is entitled to sue the purchaser for the balance of the price as a debt owed to him. In the latter case he may seize the chattel or sue for recovering the arrears of hire money or for damages as a consequence of the breach [illegible]

[illegible]

whole and would also serve to shed light on the intention of the parties as to the time of the transfer of ownership from one party to the other (*Niyogi, J.*) [illegible]

[illegible]

plating a visit to Kathiawar where his home was and he requested *D* to purchase on his account out of the [illegible]

[illegible]

another note to *D.*

[illegible]

Calcutta and also because the other Government promissory note on which interest was due, was taken away by *P* along with his other documents The promise to send another paper in return could only be interpreted as an admission that *D* was entitled to the protection afforded by the hypothecation and possession of a Government [illegible]

[illegible]

CONTRACT.

security for dues from *P.* (*Panckridge, J.*) RAMNATH v. CHANDULAL. A.I.R. 1938 Cal. 649.

——*Implied obligation to repay—Plaintiff's money forfeited for defendants dues—Right to recover.*

Where a portion of the amount deposited by the plaintiff was appropriated by Government for the satisfaction of a debt due from the defendants, it is not a case of any voluntary payment by the plaintiff, but of [illegible] As the defen[illegible] [illegible]ration, an im[illegible] [illegible] the plaintiff [illegible] the amount. (*Iqbal A*[illegible]

[illegible]

——Part performance—Applicability—Maintenance decree creating charge on immovable property—Transfer of property by judgment-debtor — Agreement [illegible]

[illegible]

covenant in the sale deed provided that the vendor should pay the assessment on the land and in case he committed default in any year the vendee or his heirs [illegible]

[illegible]

in terrorem and in the nature of a penalty which was [illegible] ent of [illegible] lieved [illegible] *Rao,* [illegible] [illegible]ERA [illegible] 304 [illegible] *ustices* [illegible] void [illegible] rer to [illegible] erms, [illegible] ay, in connexion with the Court's powers to place the parties [illegible] does any [illegible] *Digby,* [illegible] 109 = A.I.R. 1938 Nag 333 (F.B.).

——Ratification—Requirements *See* HINDU LAW—JOINT FAMILY—ALIENATION—MANAGER A.I.R. 1938 Nag 482

——*Restitution—Illegal contract—The rule and the exception*

[illegible]

CONTRACT.

had parted with property and possession after delivery alongside, and had nothing left except the equitable charge which could be enforced only against the buyer or persons taking with notice of the equity; (3) that there was nothing left in the sellers-respondents in the nature of a common law or possessory lien which would support an action in conversion or trespass, (4) that the appellants in issuing bills of lading without Mate's receipts did not commit any wrong as against the respondents and were not guilty of any breach of duty, (5)

could give the respondents any right to damages in trespass or conversion, and (6) that the equitable lien or personal license which was all that remained with the respondents under the contract when the goods were delivered to the ship, did not affect the transferee of the bills of lading so as to found a claim for conversion, though it might found a claim for breach of cor

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...try must be determined ... that law is natu...

foreign Court will, when such questions come before it, give effect to the proper law of legal tender so determined. (*Lord Wright.*) OTTOMAN BANK OF NICOSIA *v.* OHANES CHAKARIAN.
172 I C 786=10 R P C 141= A.I.R. 1938 P.C. 26 (P.C).

——*Enforceability—Legal and illegal objects—Duty of Courts.*

Per *Vivian Bose, J.*—Where a transaction consists

effect to the lawful and reject the unlawful, in fact that is what the Courts are bound to do unless the whole transaction is prohibited by statute or unless it involves serious moral turpitude ... policy. (*Stone, C.J., Bos...* *v.* LUDHESHWAR.

——*Executory agreement—Such agreement to be carried out by subsequent deed—Contract, if merged in deed.*

It is well settled that where parties enter into an executory agreement which is to be carried out by a deed afterwards to be executed, the real completed contract is to be found in the deed. The contract is merged in the deed. The most common instance perhaps of this merger is a contract for the sale of land followed by conveyance on comp... visions of the contract which the ... be performed by the conveyance ... conveyance, and all the rights of th... tion thereto are thereby satisfie...

CONTRACT.

doubt, be provisions of the contract which from their nature or from the terms of the contract, survive after completion. (*Lord Russell.*) THE KNIGHT SUGAR CO., LTD. *v.* ALBERTA RAILWAY AND IRRIGATION CO. 10 R.P.C 192=173 I.C. 88 (P C).

——*Formation—Offer and acceptance—Counter-offer—If amounts to rejection of offer.*

Where an offer containing certain conditions has been made to a party and that party by adding to the conditions makes a counter-offer, the counter offer ... made to him. ... RAO GIRDHARI ... 1938 Lah. 341.

...*ptance—Letter to member offering new shares to him and on his renunciation, to his nominee—Renunciation by member and acceptance by nominee—Contract if concluded.*

A letter addressed to a member of a company offered him new shares and in the event of his renouncing, to his nominee. The member renounced and his nominee accepted them.

contract of sale.

Where the plaintiff accepts the offer of the defendant to sell but seeks to add a further term, which the defendant refused to consider at the same time ... and ... n of ... efendant. (*Lort Williams, J.*) PACIFIC MINERALS, LTD. *v.* SINGBHUM MINING SYNDICATE.
177 I.C 524=11 R C 258= A.I.R. 1938 Cal. 343.

——*Hire agreement—Fitness of article for purpose required—Implied warranty.*

As a general rule, if a person contracts for the hire and use of a specific article, there is no implied warranty by the owner that it is fit for the purpose for which it is required. He undertakes to deliver it in the ... btaining the thing ... and efficiency for his purpose. (*Lort Williams, J.*) BHARAT BIKASH HALDER *v.* BHARAT LUXMI PICTURES.
177 I.C 540=11 R C 262= A.I.R. 1938 Cal. 248.

...*agreement—Nature of — Con...*

... agreements are, on account of their complexity, not easy to construe. The terms used by the parties are frequently so obscure and equivocal that they are calculated to elude an attempt to gather their intention from them. A hire purchase agreement is ordinarily so complex that it may be described as a compound of agreement of hiring and agreement to sell tinged with an agreement of hypothecation. With all these, it at bottom may well be a contract of sale on credit. The main point in ...

CONTRACT.

appropriate relief. The question whether or not the agreement which wears the garb of hire purchase agreement transfers by its own force the ownership from one party to the other is one of great moment for the purposes of determining the nature and extent of the remedy that is available to the aggrieved party. If it is found that the agreement is a contract of sale with the condition of retarded payment of the price by instalments, the property in the chattel would pass to the ostensible hirer If on the other hand the agreement is one of hiring, albeit coupled with an ... chase, the property will not pass to the hi... be treated only as a bailee until he exercis... after having fulfilled the required condi... former case the owner who has parted with his ownership is entitled to sue the purchaser for the balance of the price as a debt owed to him. In the latter case he may seize the chattel or sue for recovering the arrears of hire money or for damages as a consequence of the breach of the contract. To construe a hire-purchase agreement, one must look into the language used by the parties to ...

the parties as to the time of the transaction of the property in the subject-matter of the agreement If the agreement embodies a stipulation which entitles the hirer to terminate the contract at any time ...

——*Hypothecation—Proof—Deposit of Government promissory note.*

... paying a visit to Kathiawar where his home was and he requested *D* to purchase on his account, out of the money that was lying with *D*, two Government promissory notes The notes were purchased through a broker by *D*. The interest had not been drawn by the sellers of the note when they were purchased by *D* on *P's* account Subsequently when *P* was about to leave for ... he obtained from *D* all the postal securities deposit receipts held by *D* and also one of the ... ment promissory notes which had been purcha... other note remained with *D*. *P* at that ... indebted to *D* for certain amount. Subsequently *P* ...

another paper in return could only be interpreted as an admission that *D* was entitled to the protection afforded by the hypothecation and possession of a Government promissory note of a similar issue and denomination as the one which *P* was asking for In these circumstances the terms on which *D* retained the Government promissory note were not that *D* should keep it for safe custody and collection of interest but that he should hold it as

CONTRACT.

security for dues from *P*. (*Panckridge, J.*) RAMNATH v. CHANDULAL. A.I.R. 1938 Cal. 649.

——*Implied obligation to repay—Plaintiff's money forfeited for defendants dues—Right to recover.*

Where a portion of the amount deposited by the plaintiff was appropriated by Government for the satisfaction of a debt due from the defendants, it is not a case of any voluntary payment by the plaintiff, but of one of appropriation without his consent. As the defendants obtained the benefit of the appropriation, an im... ...iff ...nt.

174 I C 900 = 1938 R D 494 = 1938 A L R 319 = 10 R A. 635 = A.I R 1938 All 206.

——Part performance—Applicability—Maintenance decree creating charge on immovable property—Transfer of property by judgment-debtor — Agreement between decree holder and alienee for release of pro...

... over it—Covenant in sale deed providing that in case of default by vendor to pay assessment on land vendee by paying it should be absolute owner of property—If penal—Relief against.

... owner of land sold mining rights over it. A ...ant in the sale deed provided that the vendor ...ld pay the assessment on the land and in case he ...mitted default in any year the vendee or his heirs ...d on payment to Government of such land assess... be entitled to hold and possess with full and absolute rights the property in respect of which such payment had been made. The vendor committed ... the vendee ...eclaration ...s a clause *in terrorem* and in the nature of a penalty which was out of proportion to the possible injury which the vendee might have suffered by reason of the non-payment of assessment. The covenant therefore should be relieved against (*Pandrang Row and Venkataramana Rao,* ...ERA... 304 ...*uities* ... void because prohibited by statute the Court has power to ...

——Ratification—Requirements *See* HINDU LAW—JOINT FAMILY—ALIENATION—MANAGER A.I R. 1938 Nag 482.

——*Restitution—Illegal contract—The rule and the exception.*

Per *Vivian Bose, J*—When a contract is void ... illegality as opposed to being merely nugatory, ... paid or goods delivered in pursua... ordinarily be recovered unless it is stil... of the maxim *ex turpi causa non ori...*

CONTRACT.

But there which is e with the persons, in

direct restitution is not founded Contract Act but is because of the policy, *ex turpi causa, in pari* (*Stone, C J., Bose and Digby*

LUDHESHWAR. 177 I.C. 6=11 R N. 109= A.I.R. 1938 Nag 335 (F.B.).

——*Sale—Contract to sell—Failure to disclose mortgage—Vendee not completing—Right to damages.*

The case of a vendee stands on a different footing from that of a person who is only bound by contract of sale

contract of sale the party agreeing to sell does not disclose the existence of mortgage on the property, even if the mortgage was a registered one the party agreeing to purchase cannot be saddled with constructive knowledge

(*Niyogi, J*) MT. SUNDERA BAI *v.* PANDHARINATH. 177 I.C. 945=A.I R. 1938 Nag. 441.

——*Sale—Time, if essence of contract—Price to be paid in one month—Acceptance of instalments beyond the month.*

——Special contract with company in terms of or embodying Artic of company to COMPANY—AR TION.

——*Stock ex. must retain for his client specific shares purchased.*

A stockbroker is not considered to be under an obliga-

Atkin) W 4

——*Strc performanc*

Even if *B* promises to pay *C*, can be enforced in a suit brought by *C* against *B*, it certainly does not follow that *B's* failure to pay to *C* will give a righ

CONTRACT.

——*Third party—Right to enforce—Rule in Tweedle v. Atkinson—Extent of applicability.*

The English common law doctrine laid down in *Tweedle* v. *Atkinson* that a contract can create no o it nore A be ency

can be founded on the contract. Though the applicability of the rule in *Tweedle* v. *Atkinson* to Courts in India has been the subject of considerable discussion, opinions expressed have by no means been uniform. A general statement that where a person makes a contract with another for the benefit of a third person, that third

——*Third party—Right to enforce—Undertaking by under-tenure-holder to tenure-holder to pay Zamindar rent due from latter—Zamindar's right to sue thereon.*

A third party cannot sue on a contract made by others

tenure-holder, does not create a trust in favour of the Zamindar. Nor can it be said that the tenure-holder received the promise from the under-tenure-holder as agent of the Zamindar. The Zamindar cannot, therefore, on the basis of the kabuliyat sue the under tenure-holder for the rent of the tenure The fact that the ving rent from the name of e intended to (*Nasim Ali* E *v.* KIRAN C.W.N. 1212.

t — Contract ving insurer right to enforce legal rights of insured against third

A stranger to a contract cannot sue on the contract, and a person who has suffered injury or damage for is liable, t of insurance, the policy of against either

because such a clause is merely an agreement between the insurer and insured and does not add to the rights of

basis of a clause in the policy of insurance, under

CONTRACT.

which the insurance company is given power to enforce
the legal rights
is entitled to do
the victim of the
under an implie

INSURANCE CO., LTD. v. JANARDAN.
40 Bom L R 155=175 I.C 104=10 R B. 522= A.I.R 1938 Bom 217.

——*Validity—Document insufficiently stamped—Effect.*

The fact that a hire purchase agreement is insufficiently stamped does not render the document

cannot have the effect of changing the operation of an unambiguous agreement, though it might possibly in special cases support, along with other appropriate evidence, a claim for rectification.
MAN BANK OF

——*Variatio*
by consent—Su
contractor—Work done by contractor—
reasonable rates.

Where the original schedule of
contractor fixed under a contract b
and the contractor was abandoned
both the parties and the new enhanc

regards law of agency.

The Contract Act does not draw fine distinction between different classes of agents, but the Act is not exhaustive and so far as the law relating to agency is concerned, it merely lays down general principles

CONTRACT ACT (1872), S. 16.

parties, is 'consideration' within the definition of S. 2 (*d*) of the Contract Act. (*Weston*) KUTUB UDDIN v. DEO KARAN. 1937 A.M L J 110.

——S 2 (d) —*Consideration —Original contract between parties a wagering transaction—Forbearance of plaintiff to sue and declare defendant defaulter—If*

——S. 12—*Suit to avoid deed on ground of insanity —Scrutiny of pleading and evidence—Necessity—Absence of—Scrutiny—Finding if binding in second*

in cases of undue influence are put in the wrong order. The first thing to be found is whether the party who is said to have induced the contract was in a position to dominate the will of the other. After that the question arises, has the contract been so induced? Inadequ

——S. 23—*Agreement between priests partitioning disciples—Validity.*

An agreement between two priests by which certain disciples were specifically allotted to each of them with

... Consequently ... is not ... HUDI- ... 1938.

Held, that the agreement was unconscionable and therefore invalid. (*Coldstream and Abdul Rashid, JJ.*) ALOPI PARSHAD *v.* COURT OF WARDS. A.I.R. 1938 Lah. 23.

——S 23—If affects lease ... Grants Act. *See* CROWN GRA...

——S. 23—*Immoral contrac... tenance to past mistress—If opposed to public policy.*

An agreement by a person to ... a sum of money every month ... long as she remained outcaste ... being nothing in the agreement ...

(*Wort and Manohar Lall, JJ.*) KAMESHWAR SINGH *v.* MD. YASIN KHAN. 17 Pat. 255= A.I.R. 1938 Pat 473.

——S. 23—Public policy—Contract of betrothal in ... of Hindu bride and bride... age brokage contract. *See* 1937 M.W.N. 1274.

...*licy—Government opening telegraph office at particular place at request of certain persons—Contract with them for meeting deficit in its working expenses—Validity.*

Where Government open a telegraph office at a particular place at the request of certain persons in that ...

...*ublice policy—Mortgage executed by ... of surety for amount forfeited by*

...ed security for the appearance of the ... date before the Magistrate There ..., express or implied, made between him and the accused at that time that the accused would subsequently reimburse him for such amount as might be *forfeited*. The *security* bond was subsequently *forfeited* as the accused failed to appear on the fixed date. Three ...

CONTRACT ACT (1872), S. 23.

——S. 23—*Stifling prosecution—Test—Motive and object of agreement—Distinction.*

It is against public policy to make a trade of felony or attempt to secure benefit by stifling a prosecution or compounding an offence which is not compoundable in

The test to be applied in all such cases is, as to whether it was an express or implied term of the bargain between

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ment coming to him for withdrawing the prosecution against his debtor. When security is given by an outsider, who is under no existing obligation, the consideration could be nothing else but withdrawing of the criminal case, and as such the security is not entertainable in law. The position is that if the pre-existing liability of the debtor was the sole consideration for the security which he gives, the transaction will be protected even if it were given under threat of criminal proceedings, but if the dropping of prosecution was also a matter of bargain between the parties, and constituted a part of the consideration apart from the pre existing debt, the security cannot be enforced in law. (*Derbyshire C.J. and Mukerjea, J.*) SUDHINDRA KUMAR *v.* GANESH CHANDRA 43 C W.N. 147 = A.I.R. 1938 Cal 840

——S. 25—*Acknowledgment without express promise to pay—Effect of.*

Mere acknowledgment of liability without any express promise to pay or without any reference to the future liability to pay does not fa
of S. 25 (*Jai Lal and Dalip Si*
NATH GOELA *v* BAIJ NATH.

——S 25—*Implied promise to pay—Sufficiency.*

Mere implied promise to pay is not sufficient for the purposes of S. 25. More than three years from the last item of account the balance was struck and signed by the debtor. The entry however contained no words wh
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CONTRACT ACT (1872), S. 25.

CHAND GOPAL CHAND. 178 I C. 446 = A.I.R 1938 Lah 155.

——S 25 (2)—*Applicability—Contract by minor—Ratification on attaining majority.*

A contract entered into by a minor, being null and by the minor on attain- form a valid contract on med. The consideration r contract cannot be imported into the contract into which the minor entered on attaining majority. S. 25 (2) has no application to the contract of this kind. (*Din Mohammad, J.*) NAZIR AHMAD *v.* JIWAN DAS. 177 I C. 388 = 11 R L 307 = A.I R 1938 Lah. 159.

——S. 25 (3)—*Agreement to pay barred debt—*

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A I R 1938 Lah. 234 (F.B).

——S. 25 (3)—*Money bond to pay off father's time-barred debts—Extent of liability.*

Where the petitioner enters into a money bond not to raise personal loan but only to pay off his deceased father's time barred debts, a decree on the bond can be passed only against the estate of the deceased in his hands, but no personal decree can be passed against the petitioner (*Din Mohammad, J*) NAZIR AHMAD *v.* JIWAN DAS 177 I C 388 = 11 R L 307 = A I R 1938 Lah 159

——S 25 (3)—*Promise to pay—Basis of suit*

When a promise to pay falls under S 25 (3) of the Contract Act, it constitutes a valid agreement for the purpose of su
for the promis
debts covere
(*Beckett, J.*)

A I R 1938 Lah 757.

——S 25 (3)—*Promise to pay—If to be express— from acknowledgment—Suffi-*

25 (3) of the Contract Act, promise as opposed to an un- ment involving an implied promise to pay. Where the writing relied upon was to the effect "A balance is struck The said Rupees, ...are found due. The same are payable," and the Gujerati words were "baki nikliya te deva sahi"

Held, that the words could not be interpreted as

———S. 27—Monopoly—License by Zamindar entitling licensee to collect exclusively hides of all dead animals within Zamindari—Enforceability. *See* CONTRACT ACT, S 23 **17 Pat. 255.**

———S 30—*Mandi contracts—Validity.*

'Mandi' contracts cannot
on their apparent natur
proof of the facts that the
tracting parties at the time
lar contract in question wa
and in no circumstances to call for, or give, delivery. (*Tek Chand, J.*) LAKSHMI NARAIN *v.* BALA PRASHAD **A.I.R. 1938 Lah. 825.**

———S 30—*Wagering contract—Speculative transaction—If amounts to.*

Speculation does not necessarily involve a contract by way of wager, and to constitute such a contract a common intention to wager is essential. Even if
to a contract were a speculator who never int
give delivery, and that fact was known to
party, yet in the absence of any bargain or
ing, express or implied, that
delivered, that would not cor
innocent, into a wager, nor
to the greater part of the
but an adjustment of clain

Where therefore althoug
the parties were speculative
evidence showing that the
differences only, or that there was no intention to take

———S. 39—*Acquiescence—What may not amount to—Preliminary decree in mortgage suit — Subsequent compromise—Default in carrying out terms*

In a mortgage suit a preliminary decree fixing the amount due to the plaintiff was passed. Subsequently by a compromise it was agreed that the plaintiff should accept the mortgaged property at valuation less than the amount fixed in the preliminary decree and in addition to this, the judgment debtor was to pay certain sum on or before a fixed date. A surety was
due payment of this additional sum.
on conveyance of the property and th
additional sum, the plaintiff should no
personal decree but in default of the payment he was free to enforce the decree in the usual manner. On default in the payment the plaintiff asked for a personal

decree against the judgment debtor for the amount due on the preliminary decree and at the same time he prayed for execution against the surety. He was unsuccessful in serving notice upon the surety.

Held, that from the mere fact that the plaintiff mis-

———S. 43—*Scope and effect of—Ex partners—Joint decree against ex-partners and as well as heirs—Discharge of debt by the heirs of ex partner—Suit for contribution against other ex partners and heirs—Maintainability—Decree against Hindu partner and as well as shares of son and grandson in family property in respect*

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partnership relation no longer exists and there is no

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a decree
and 2 who were also impleaded as parties to the suit. Under the decree, the plaintiffs were made liable to the extent of their share, in the joint family properties of themselves and their father, *A* who was one of the partners In execution of the decree the family house of the plaintiffs was attached, *A* having died in the meanwhile. The plaintiffs were thus compelled to pay the whole decree amount, and they did so in 1923 and

with *Stone, J.*
Stone, JJ.)

(1) that the plaintiffs were entitled to invoke the equitable rule as to contribution between joint judgment-debtors and to recover from the defendants their shares

CONTRACT ACT (1872), S. 45.

of the decree debt; (2) that the Hindu Law doctrine of pious obligation of sons to pay their father's debt not stand in the way of the plaintiffs' claim for con bution. (*Pandrang Row, J., on a difference of opin between Madhavan Nair and Stone, JJ*) CHOC LINGAM CHETTIAR *v.* MEYYAPPA CHETTIAR.

48 L W. 383 = 1938 M.W.N 1041 = (1938) 2 M L J 287

——S. 45—*Joint mortgagees—Suit by one—Maintainability.*

Where on the death of one of two joint mortgagees, the survivor alone sued on the mortgage.

Held, that the suit was defective owing to the non-joinder of the legal representatives of the joint promisee. (*Weston.*) HAMIR SINGH *v.* AMAR CHAND

1937 A M L J. 118.

——S 49—Duty of promisor under—Failure to apply to fix place—Effect—Right of creditor to demand payment at his own place. *See* C. P. CODE, S 20 *c*)

48 L W. 438

——Ss 59 to 61—*Appropriation—Contrary to stipulation in mortgage deed—Validity.*

Where there is the definite stipulation in the mortgage-deed that the money paid is to be appropriated, in the first instance towards payment of interest and the balance set-off against the principal due, the mortgagee must in such a case apply the money received in accordance with the provisions of the mortgage deed He cannot appropriate such payments towards principal For purposes of income tax, the authorities are certainly entitled to assume that a credito ments only in accordance with th debtor (*Derbyshire, C J. and* GOBINDRAM, *In the matter of.*

A I R 1938 Cal 20

——Ss 59 to 61—*Appropriation—Rule as to—If applies to agreement regulating order of payment*

the payment otherwise than in respect of the debt to This doctrine, irties enter into yment of instal *rrell, C. J and* IDFY *v* RAMA =4 B R 220 =

10 B P 379 = A I R 1938 Pat 8.

——S 60—*Appropriation—Portion of debt not binding on joint family—Realisations—Method of priation*

Where a portion of the joint family debt arising mmoral purpose e creditor is not ut of the sale of debt but only towards the portion for lawful purpose (*Bennet and Verma, JJ*) BED R

176 I C 619 = 1

1938 A W R

——S 60—Several

CONTRACT ACT (1872), S. 53.

(*Bennet, Mohammad Ismail and Verma, JJ.*) KAN-

——S. 62—*Proposal to discharge debt by executing mortgage—If constitutes novation.*

If there is a proposal to discharge a debt by executing a mortgage but the right of reverting to original position is reserved unless the new transaction is complete, there is no true novation and there is no bar to a suit on the original cause of action. (*Beckett J.*) KISHEN LAL *v.* GOHLI 40 P L R. 689 = A I R. 1938 Lah 757.

——S 64—'*Rescinds*'—*Interpretation.*

The word 're-cinds' as used in S 64, Contract Act, implies an "express and unequivocal cancellation of the contract." Where a domestic servant employed as sweeper of the house leaves his master without any notice and the master does nothing except engaging another person for doing the work the contract with the former servant is not necessarily rescinded by the master and hence the servant is not entitled to get the pay for the work done. (*Mackney, J*) ETBARI *v.* *v.* BELLAMY. 176 I C 526 = 11 R.R. 54 = A I.R. 1938 Rang 207.

——S 65—*Applicability.*

Per *Vivian Bose, J.*—S. 65 applies to agreements which have been void from their inception as well as to contracts which became void subsequent to their making. Per *Digby J.*—S 65, Contract Act, does apply to hich are void by reason of illegality. *Bose and Digby, JJ.*) ASARAM *v.* 177 I C 6 = 11 R N 109 = A I R 1938 Nag 335 (F B).

——S. 65—*Applicability—Contract void from inception.*

t would ich has ould be DALIP ah. 721.

——S 65—Applicability—Lease invalid for non-compliance with Ss 68 and 69, Madras District Municipalities Act—Suit on—Right to relief. *See* T. P. ACT, SS. 105 AND 107. 47 L W 668.

——S 65—*Applicability—Transfer amounting to transfer of occupancy rights—Transfer avoided—Transferee co-sharer, if can sue under S 65*

Where an occupancy tenant executes a deed of surrender in respect of a field amounting to a transfer of sharer in set aside posses-sion of the field the transferee co-sharer, whatever remedies he may have against the transferring tenant, is not entitled to recover under S. 65, Contract Act, from the lambardar the amount of the consideration paid by him Having knowingly entered into a voidable iltivating the under S 65, has enforced to exercise. the voidable

CONTRACT ACT (1872), S. 65.

——S. 65—*Assignment of mortgagee rights—Mortgage declared void—Liability of mortgagee to refund consideration to assignee.*

——S 65—*Money belonging to plaintiff wrongly obtained by defendant under contract with another person—Latter not held out by plaintiff as agent—Plaintiff's right to recover amount*

Where money belonging to the plaintiff was wrongly obtained by the defendant from another person under a

—*Recovery of money advanced—Cause of action—Starting point.*

When a transfer is void owing to a
so that a cause of action to recover th
under S. 65, Contract Act arises, time
from the date of the agreement. (
Clarke, J.) GULAM HUSSEIN *v.* MIR JAKIRALI.

1938 N.L.J. 409

——S. 68—*Applicability—Hindu minor—Contract by guardian to sell land and receipt of earnest money—Sale not completed—Right to recover earnest money from minor's estate.*

A covenant by the guardian of a Hindu
immovable property of the minor cannot

CONTRACT ACT (1872), S. 68.

estate. Such money is paid as a guarantee or security for the performance of the contract which in law is no contract at all. It cannot be regarded as having been paid to the guardian for necessaries or benefit of the minor. S. 68 of the Contract Act does not apply, and the vendee cannot therefore recover it under S 68 or under ... the benefit of the ...*dhavan Nair, J.*)

=48 L.W. 112=
1938 Mad 765=
(1938) 2 M L J. 277.

——S. 68—*Applicability—Money advanced to guardian—Liability of minor—Burden of proof—Duty of creditor.*

In a case where a creditor seeks to make the estate of the minor liable for advance made for necessaries (including in term advances made for necessary purposes), mere *bona fide* enquiry by the creditor into the existence

supplied to an infant, the

AMGOPAL
=A I.R. 1938 Nag. 65.

proved.

own not only that the
on goods *suitable to the*
but also that they were
ments at the time of sale
and delivery. As any one who supplied necessaries to
... of a legal creditor, so anyone
fant for the purpose of
stand in the position
J. and Dunkley, J.)

A.I R 1938 Rang. 359

——S. 68—*Liability of minor under transaction by guardian—Test of—Alienation by guardian—Distinction.*

It is one thing to lay down set of rules with respect to

proper' can be applied in both cases, but the
must necessarily differ for what is fair and
in the shape of benefits conferred or comforts

CONTRACT ACT (1872), S. 68.

supplied, may not be fair and proper in the case of an alienation. One important point of distinction between the two classes of cases is this in the case of an alienation where necessity is alleged, enquiries made in good faith protect the transferee, whereas in the case of necessaries such considerations are irrelevant. Then again an alienation by a minor would be void whatever the purpose for which it was made, but in the case of necessaries supplied to him it is immaterial whether the order comes from him or from his guardian, in both the cases the test is precisely the same the goods supplied, or the benefits conferre to the social status and condition In and to his actual requirements at transaction. (*Vivian Bose, J.*) SADASHEO BALAJI *v.* HIRALAL RAMGOPAL. 175 I C 149=10 R N. 437= A I.R. 1938 Nag 65.

——S. 68—*"Necessaries"—Meaning of—If confined to goods.*

The term 'necessaries' is not confined to goods. It can include other things such as good teaching and instruction whereby the minor may profit himself after wards, and also money to enable him to obtain these necessaries. For example, the term includes costs incurred in defending a suit to save the minor's property and to defend him in a criminal prosecution, so also reasonable marriage expenses of a minor himself or a sister or other coparceners and such religious ceremonies as the minor would have had to perform if he had been an adult. (Case law referred).

But where a guardian of a Hinc money for Divali expenses,

Held, that the amount would not not necessary (*Vivian Bose, J.*) *v.* HIRALAL RAMGOPAL 10 R N 437=A.I R 1938 Nag 65

——Ss. 69 and 70—*Applicability—"Bound by law to pay"—Meaning—Purchaser of mortgaged property free of encumbrance—Vendor agreeing to pay off encumbrance—Assignee of debts from vendor's widow under taking to pay encum —Non payment—Sui ment by purchaser t assignee of debts for Privity of contract*

C purchased certain properties from *A*, free of encumbrances, the properties were subject to a mortgage

Appellant did not however, discharge the debt of *N*. who therefore sued on the mortgage and obtained a decree for sale, in execution of which he brought the properties to sale *C*, in order to save his properties,

received consideration for the promise, that *C*, was not liable to pay the debt in question, but was merely interested in discharging it, and that the case was governed by S 69 of the Contract Act, if not by S. 70 as well. The expression "bound by law to pay" in S. 69

CONTRACT ACT (1872), S. 69.

cannot be interpreted as an obligation under a contract and not under law. The expression does not mean bound by law to the plaintiff, but that the defendant at the suit of any person might be compelled to pay. (*Abdul Ghani and Nageswara Iyer, JJ.*) RANGE GOWDA *v.* THIMME GOWDA. 16 Mys L.J. 27=42 Mys H.C R. 637.

——S 69—*Applicability—"Interested in the payment, etc."—Meaning of—Hindu reversioner—Payment of Government revenue to avert revenue sale of estate—*

'ate of the last male present interest in er, yet it is manifest that he is substantially interested in the protection of the estate or its devolution. Consequently a reversioner who pays kandayam due to the Government from the estate in order to prevent it from being sold for non-payment of the kandayam by the limited owner or an alienee from the life estate holder, is entitled under S 69 of the Contract Act to claim reimbursement of the amount paid by him from the defaulter. (*Shankaranarayana Rao and Abdul Ghani, JJ*) NAGABHUSHANA BHATTA *v.* VISVESWARIAH. 16 Mys L J 399=43 Mys H C R. 557.

——S. 69—*Applicability—Mortgagee paying off decree for arrears of land revenue to avert sale.*

There is no reason why a person legally bound to pay should be held to be not a person who is interested in

on the mortgagor, so long as the mortgagee is not in possession of the mortgaged property, the duty of paying all public charges accruing due in respect of the property. As between the mortgagee and the mortgagor, the latter is primarily bound to pay the arrear and when the mort-

——Ss 69 and 70—*Applicability—Sale by Hindu widow—Discharge of personal debts of husband and of ...ates of husband— ...lity to make re- ...discharged debts.* ...estate of her hus- ...s, for discharging purely personal money debts of her husband or debts contracted by her to perform the funeral rites of her deceased husband, the purchaser cannot rely on Ss 69 and 70 of the Contract Act and claim from the illegiti-

and Singaravelu Mudaliar, JJ) CHIKKAMMA *v.* NANJUNDA. 16 Mys L J 184= 43 Mys H C R 105.

——S. 69—*Co-tenant paying rent—Right to contribution.*

CONTRACT ACT (1872), S. 70.

Where in a suit for contribution between co-tenants, the defendant co-tenants prove an agreement between them and the plaintiff, whereby the plaintiff alone had agreed to pay the entire rent due from the co-sharers jointly, the plaintiff is not entitled to claim contribution in respect of the rent paid by him in pursuance of the agreement. So also where in the suit for contribution [illegible]

so reimbursed by the landlords is not maintainable in the suit for contribution, as there is no mutuality between the landlords on one hand and the co sharer tenants on the other and they do not come within the provisions of S. 69, Contract Act. Nor can the plaintiff claim any contribution from the transferee, when he was not impleaded as defendant to the rent suit and his jama was separately recognized by the landlord. Having once discharged his liability with respect to the portion which appertains to him he cannot be said to be a person within the meaning of S. 69, wh [illegible] what the plaintiff was required to [illegible] JOY KRISHNA v. KALI KRISHNA. [illegible]

A [illegible]

——S 70—*Suit for money*— [illegible] *found against—No alternative prayer—Relief under section—Court, if can grant.*

Where a plaintiff sues for recovery of money on the basis of an alleged agreement which is found against and there is no relief asked for under S. 70 of the Contract Act, it is not open to the Court to grant that relief. (*Bhide, J.*) TEJ RAJ v. RAM LAL.

I.L.R. (1938) Lah 511=175 I.C 314=
10 R L. 703=39 P L.R. 1007= [illegible]

——S. 72—Construction—
See C. P. CODE, O. 21, R. [illegible]
S. 72.

——S 72—*Suit against* [illegible] *decree—Estate attached in ex*[illegible] *sale—Owner paying decretal* [illegible] *Right to recover.*

A suit was brought agains[illegible] promissory note and a pers[illegible] against her. In execution c[illegible] holder attached the estate whereupon the owner of the [illegible]

amount paid, had suitable proceedings been taken, was held to make no difference. (*Stone, C.J. and Niyogi,* [illegible]

paid by vendee—Breach by vendee—Forfeiture of deposit—Right of vendee to refund—Vendee not taking legal proceedings against vendor—If can be presumed to have treated contract as at an end.

It is a well known principle of law that if a purchaser on agreeing to purchase a property agrees to pay and does pay, an advance or a deposit, that must be regarded as security for the fulfilment of the contract of sale,

CONTRACT ACT (1872), S. 73.

more especially when the deposit is insisted upon by the vendor as a term of the contract. Though there is nothing specific said about forfeiture, the mere fact that a deposit is demanded carries with it the implication that it should be forfeited if the contract is broken, unless the vendee proves an agreement to the contrary. Where a sale deed recites that the consideration for the sale [illegible] the impli- [illegible] months [illegible] the docu- [illegible] posit and taking delivery of the sale-deed from the vendor returns it to the vendor being unable to find the purchase money and allows the period of four months' time for registration to pass without making any further payment, he is not entitled to claim back the deposit paid by him and plead that the vendor has treated the contract as at an end. The vendee who holds a deposit which he can forfeit is not bound to institute a suit for damages or other remedy against a vendee who has no money to pay the vendor. It cannot be inferred from the omission of the [illegible]

——S 73—*Applicability — Marriage—Contract between Hindu parents to give daughter of one in marriage to son of other—Effect of—Breach by father of bridegroom—Damages—Measure of—Suit by father of bride—Claim to amount as increased expenditure in fresh marriage alleged to be due to bride having been discarded—Sustainability.*

Where a contract is entered into between two Hindus that the daughter of the one should be given in marriage [illegible] [illegible]s to the [illegible] [illegible]o kinds [illegible] any, and [illegible] or bride- [illegible] loss to [illegible] injured [illegible] damages [illegible] y and as [illegible] reach of [illegible] S. 73 of the Contract Act which prescribes the general [illegible]

——S 73—*Breach of contract—Interest on damages—If can be allowed.*

[illegible] is that, in the absence of special cir- [illegible] st cannot be allowed on damages for [illegible] for sale of goods. (*Tek Chand, J.*) [illegible] LAL v. KARKHANA JOINT HINDU [illegible]

40 P L.R. 531.

——S. 73—*Interest as damages—Detention of debt.*

S. 73 is merely declaratory of the common law as to damages Interest cannot be allowed at common law by way of damages for wrongful detention of debt. (*Sir Shadi Lal*) BENGAL NAGPUR RAILWAY CO., LTD. v. RUTTANJI RAMJI 65 I A 66=

I L R (1938) 2 Cal 72=1938 A L J. 169=
19 Pat.L.T. 125=47 L.W. 281=1938 O.W.N. 261=

CONTRACT ACT (1872), S 73.

32 S L R 374=1938 A.W.R. (P.C.) 52=
1938 O.L R 119=1938 A L.R. 167=
1938 O A 300=40 Bom L R 746=

42

use with carbon paper plant—Breach of contract by seller—Buyer's right to loss of profits.

The plaintiff bought from the defendant a boiler for use in connection with the carbon paper plant at his factory. The boiler was delivered on 20th October, 1933,

plaintiff that he had been unable to make any profit from producing carbon paper, and he claimed damages for that loss of profit

Held, (*i*) that the plaintiff kept the boiler too long to be in a position to be able in law to reject it; (*ii*) that in the absence of evidence that the plaintiff at any time made or was able to make but for lack of a suitable boiler carbon-paper at a profit, his claim for damages on the basis of loss of profit must fail; (*iii*) that the plaintiff could recover damages for breach of contract on the basis of the boiler being unfit

sum of money estimated to be the overhead charges in respect of the carbon-paper plant only, during the time

38.

——S 73 Illus (n)—*Creditor's right to recover interest.*

The Illus (*n*) to S 73 does not confer upon a creditor a right to recover interest upon a debt which is due to ... under any) BENGAL

1938 A L J 169=
1
1938 A V
1938 A L R
42
67 C L J 153=
A I R 1938 P C

——S 74—*Construction of—Right to compensation for breach of contract—Proof of actual damage or loss—If condition precedent*

The right of a party complaining of a breach of contract to reasonable compensation under S 74 of the Contract Act is not dependent on proof of actual loss or damage. Even when no actual damage or loss is proved to have been caused by the breach the party is entitled to compensation. (*Ganga Nath, J.*) MUNNA LAL BIS

CONTRACT ACT (1872), S. 71.

WANATH *v.* RAHMATULLAH. 1937 A.L J 1385=
1938 A W R. (H.C.) 11.

——S. 74—*Contract of lease—Lessee paying certain ... case of, ... would*

,000 per
s a gua-
rantee for carrying out the terms of the contract and agreed to pay the balance on an appointed date. The contract contained a clause that if the balance was not paid by the appointed date, the money already paid would be forfeited. On breach of contract, the lessee

62.

It is settled law that a stipulation for an enhanced rate of interest, if interest is not paid, is not *per se* a penal stipulation. In such a case the most important circumstance on which, the decision would depend, is the difference between the enhanced rate and the original rate. The principle of S. 74 of the Contract Act is that Courts will interfere to vary the contract between parties, only when equity demands that substantial variation should be made. (*Weston*) BENI PRASAD *v.* SARFRAZ ALI SAYED. 1937 A M L J. 97

penalty imposed in the original document between the parties In default of the payment of instalments the defendant would be liable to pay the whole sum of Rs 5,600

Held, that there was clearly a penal clause.

Held, further, that the executing Court as a Court of equity had the power to relieve against the penalty even if the decree was one on award (*Hazeliwala and Lobo, JJ*) AHMEDBUX *v* BALCHAND
177 I C 925=11 R S 69=A I R. 1938 Sind 185.

——S 74—*Penalty—Stipulation for interest at 12 per cent—Clause that on certain default interest to be*

mensem, does not stand in the way of the Court giving relief since the contract contains a penal clause. What the Court has to consider is the contract, and not the claim made When the security at the time of the loan was worth more than twice the amount advanced, the Court can take that into consideration and reduce the interest. In such a case the most that can properly be allowed is 1 per cent. simple interest per mensem, originally reserved in the mortgage deed (*Stone, C. J. and Digby,*

CONTRACT ACT (1872), S. 68.

BHAGWANTRAO *v.* DAMODAR,

20 N.L J. 285=

——Ss 78, 108 and 121—

company—If goods—Transfer

transferor to rescind.

Share certificates are goods within the meaning of S. 78 of the Contract Act when the person in whose name the shares stand sells or transfers them to another, the title to the same passes to the transferee who gets a valid title to them, and the transfero

rescinding his contract of sale or

Ghani and Singaravelu Mudaliar,

MIAH *v.* RANGAPPA. 1

43 Mys. H C R 58.

——S 124—*Contract of "indemnity"—Undertaking by second mortgagee to pay off prior mortgage—Breach —Suit by mortgagor for damages—Breach—Limitation—Starting point—Limitation Act, Arts.* 83 and 116.

An undertaking by a second mortgagee to pay off a prior mortgage cannot be held to be a contract of indemnity in the absence of an express

deed of mortgage to the second mortg

nify the mortgagor; a suit for damage

breach of the undertaking to pay off th

DEMANDS RECOVERY ACT, S 37.

I.L R (1937) 2 Cal 698

——S. 126—*Guarantee—Construction—Liability of guarantor*

In construing a guarantee, the principle is that a guarantee will only extend to a liability precisely answering the description contained in the guarantee. Therefore before a creditor can enforce

a guarantor he must satisfy that

ang Row and

doctrine though applicable to a corporation, cannot apply to a Court or an authority exercising judicial functions; a certificate officer is a Court under the Act. The consideration is also 'lawful' in that the release is in fact, in aid, and not to the detriment, of the

CONTRACT ACT (1872), S. 133.

——S. 128—*Special contract—Letter of guarantee—Undertaking to pay amount "after attempts have been made to realise the same from the principal debtor"—Effect—Liability of guarantor—When arises—Mere demand for payment from principal—If sufficient to*

undertakes

become due

er attempts

have been made by the creditor to realise the same from the principal debtor," there is a special contract between the creditor and the guarantor to the effect that the creditor should not be entitled to recover from the guarantor until he has first attempted and failed to obtain satisfaction by some sort of proceedings against the principal debtor. The creditor's right to recover

and does not

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id 139—*Applicability—Surety*

t—Decree—Execution against

—Appeal from decree—Appli-

ution—Offer and acceptance of

—Effect—Former surety—If

discharged.

Having regard to the definitions in S. 126 of the Contract Act, Ss. 133, 135 and 139 of the Act cannot in terms apply to a surety who executes a surety bond to a Court; there is in such a case no creditor within the meaning of S. 126. But there is no reason why the principles underlying those sections should not be

question whether

dertaking he has

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on of immovable

property and mesne profits, the plaintiff applied for

amount of mesne profits for which *M.* and *B. S.* the former two sureties were liable, and *D.* executed a bond to the appellate Court undertaking to be liable for the amount in case the defendant failed to abide by the final decree or decree that might be passed in the matter. On

CONTRACT ACT (1872), S. 133

23—11—1934 the decree of the trial Court was confirmed. The plaintiff having sought to execute the decree against the former sureties, *M.* and *B S*, they pleaded that they were discharged owing to *D.* having been accepted as a new surety in their place.

Held (1) that the Contract Act was not exhaustive, (2) that the general principles of the law of suretyship (and in particular the principle that the rights of a surety are not to be interfered with without his consent) might be applied and ought to be applied even though the provisions of the Contract Act did not govern the case, (3) that the Court itself having been responsible for a change in the situation which materially affected the position of the former sureties and there having been a delay of six years without any justification it must be held that they were discharged from liability (*Broomfield and Macklin, JJ*) PARVATIBAI HARIVALLABH:

variation—If discharged.

the contract of guarantee that the promisee must show performance before he can hold the promisor liable. If the contract with the principal debtor is varied without

draws the cancellation and submits to the claim of the creditor If the consideration for the original contract with the principal debtor fails, the latter is relieved of all liability, and necessarily the surety also ceases to be liable as surety. The fact that the principal debtor withdraws his defence to an action by the creditor and allows judgment to be given against him cannot affect the position of the surety. (*Leach, C.J and Venkata ramana Rao, J.*) NUSERWANJI CURSIDJI BHESANIA & CO *v* MAHAMUJI AMMAL 1938 M W N 325= A I R 1938 Mad 585

——S 133—*Surety for tax collector of municipal committee—Son of tax-collector allowed to collect taxes without notice to surety—Defalcation by son—Liability of surety*

A person stood surety for the tax-collector of a Municipal Committee The security bond provided that the surety was to be liable in case the tax-collector misappropriated any amount that came in his hands or in case any default in payment was made by him. Subsequently the son of the tax-collector began to collect the taxes in his father's name with the consent and knowledge of the President and Secretary of the Municipal Committee The President or the Secretary did not give any notice of this fact to the surety On a defalcation being made by the son the surety was sought to be made liable

Held, that as the person had stood surety only for the personal honesty of the tax-collector and not of his son and as the kind of employment was such that it should have been conducted personally
the surety had given security,
bound to something for which
(*Mosely, J.*) H PIN SEIN
PALITY. 177

CONTRACT ACT (1872), S. 136.

——Ss. 134 and 139—*Discharge of surety—Creditor excluding debt guaranteed by surety from settlement by the Debt Conciliation Board.*

The position of the surety is twofold: on the one hand he is liable to pay the debt, on the other hand when he pays the debt, he stands in the shoes of the creditor and he is entitled to enforce against the principal debtor all the remedies which were available to the creditor. If the liability of the surety is so co extensive with that of the principal debtor, his right is not less co extensive with that of the creditor after he satisfied his debt. To enable the surety to enforce his right against the principal debtor, there are two essential conditions (*i*) that the debt itself must subsist, (*ii*) that his remedy against the principal must remain unimpaired. Consequently the creditor will be entitled to compel the surety to perform his

declaring that he would recover it from the surety, the

and the creditor by lifting the burden of the debt from off the shoulders of the debtor and laying it on those of the surety seeks virtually to shift his own disability

——S. 135—*Auction purchaser allowed to withdraw deposit on furnishing security to re deposit when asked—Surety bond executed—Purchaser when asked to deposit amount asking for time which was granted—Consent of counsel for decree-holder—Surety, if absolved from liability.*

Where in an execution case, the auction purchaser who had deposited the sale price in Court was allowed to withdraw it on furnishing security to re deposit when asked to do so, and on so being asked he asked for a month's time to deposit the amount which was granted by the Court and was not objected to by the counsel for the decree holder, but on subsequent date the Court being aware of the surety bond ordered the surety to deposit the amount and modified the previous orders.

Held, that the surety was not absolved under S. 135, Contract Act The bond was in favour of the Court and the Court had discretion to order the auction-purchaser to deposit the amount at any date it liked and the consent of the counsel for the decree-holder was immaterial (*Bhide, J*) MOHAMMAD RAMZAN *v* MT. KHADIJA SULTAN BEGUM. 40 P L R. 755= A I R. 1938 Lah 472.

——S. 139—*Surety bond — Surety undertaking obligation on behalf of two defendants—Liability in respect of the amount decreed against the defendants—Suit dismissed against one defendant—Compromise decree passed against another defendant—Discharge of surety.*

In a prior suit, a surety gave a security bond, on
The bond ran thus
y personal security,
pay to the plaintiff
signees any amount
against the defen-
vered from the sa

transferor to rescind.

Share certificates are goods within the meaning of S. 78 of the Contract Act when the person in whose name the shares stand sells or transfers them to another, the title to the same passes to the transferee who gets a valid title to them; and the transferor is precluded from rescinding his contract of sale or transfer. (*Abdul Ghani and Singaravelu Mudaliar, JJ*) AKKITHIM MIAH *v.* RANGAPPA. **16 Mys L J. 115= 43 Mys. H C R 68.**

——**S 124**—*Contract of "indemnity"—Undertaking by second mortgagee to pay off prior mortgage—Breach—Suit by mortgagor for damages—Breach—Limitation—Starting point—Limitation Act, Arts. 83 and 116.*

An undertaking by a second mortgagee to pay off a prior mortgage cannot be held to be a contract of indemnity in the absence of an express ... deed of mortgage to the second mortg... nify the mortgagor; a suit for damage... breach of the undertaking to pay off th... is governed by Art. 116 of the Limitation Act, when the contract is registered. Limitation commences to run from the time the contract is broken and not from the time at which any damage arising therefrom is sustained by the plaintiff ... SAO *v.* GUNI SING ... **4 B R 6 ... 1938 F...**

——**S. 126**—Contract of guarantee—What amounts to—Who can enforce it *See* BENGAL PUBLIC DEMANDS RECOVERY ACT, S. 57. **I L R. (1937) 2 Cal 698**

——**S. 126**—*Guarantee—Construction—Liability of guarantor.*

In construing a guarantee, the principle is that a guarantee will only extend to a liability precisely answering the description contained in the guarantee. Therefore before a creditor can enforce the liability given by a guarantor, he must satisfy that the conditions of the ...

——**Ss. 127 and 23**—*Consideration for guarantee—Sufficiency—'Lawful' — Release of certificate-debtor under Public Demands Recovery Act (Bengal Act III of ...*

...

apply to a Court or an authority exercising judicial functions; a certificate officer is a Court under the Act. The consideration is also 'lawful' in that the release is in fact in aid, and not to the detriment, of the

——**S. 128**—*Special contract—Letter of guarantee—Undertaking to pay amount "after attempts have been made to realise the same from the principal debtor"—Effect—Liability of guarantor—When arises—Mere demand for payment from principal—If sufficient to entitle creditor to proceed against guarantor.*

Where a surety by his letter of guarantee undertakes to pay the creditor the amount which may become due to him under the letter of guarantee "after attempts have been made by the creditor to realise the same from the principal debtor," there is a special contract between the creditor and the guarantor to the effect that the creditor should not be entitled to recover from the guarantor until he has first attempted and failed to obtain satisfaction by some sort of proceedings against the principal debtor. The creditor's right to recover ...

... demand payment from the principal debtor, as that would not amount to an attempt to realise the debt from the assets of the principal debtor (*Collister and Bajpai, JJ*) RADHA KRISHNA DAS *v* AJODHIYA ... **= 1937 A W R. 1194.**

... *Applicability—Surety ... ee—Execution against ... from decree—Application for stay of execution—Offer and acceptance of fresh surety in appeal—Effect—Former surety—If discharged.*

Having regard to the definitions in S. 126 of the Contract Act, Ss. 133, 135 and 139 of the Act cannot in terms apply to a surety who executes a surety bond to a Court, there is in such a case no creditor within the meaning of S. 126. But there is no reason why the principles underlying those sections should not be applied *mutatis mutandis*, though the question whether a surety is discharged from the undertaking he has ... en to the Court depends on the construction of the ...ety bond. In a suit for possession of immovable ...perty and mesne profits, the plaintiff applied for ...ointment of a receiver pending the suit, but the defen...t agreed to give security for the profits One *M* ... offered and accepted a surety for the mesne profits of the year 1927—1928 and on 23—10—1937 he executed a bond to the Court undertaking that in the event of the defendant failing to satisfy the decree or order that ...

... former two sureties were liable, and *D.* executed a bond to the appellate Court undertaking to be liable for the amount in case the defendant failed to abide by the final decree or decree that might be passed in the matter. On

23—11—1934 the decree of the trial Court was confirmed.

Held (1) that the Contract Act was not exhaustive, (2) that the general principles of the law of suretyship …

change in the situation which materially affected the position of the former sureties and there having been a delay of six years without any justification it must be held that they were discharged from liability (*Broomfield and Macklin, JJ*) PARVATIBAI HARIVALLABH …

the consent of the surety, the latter who is not a consenting party to the variation is discharged from liability, although the principal debtor who is entitled to cancel and does cancel the contract, subsequently withdraws the cancellation and submits to the claim of the creditor If the consideration for the original contract with the principal debtor fails, the latter is relieved of all liability, and necessarily the surety also ceases to be liable as surety. The fact that the principal debtor withdraws his defence to an action by the creditor and allows judgment to be given against him cannot affect the position of the surety. (*Leach, C.J. and Venkataramana Rao, J.*) NUSERWANJI CURSIDJI BHFSANIA & CO v MAHAMUJI AMMAL. 1938 M W N 325= A I R 1938 Mad 585

——S 133—*Surety for tax-collector committee—Son of tax-collector allowed without notice to surety—Defalcation by of surety.*

…

case any default in payment was made by him. Subsequently the son of the tax-collector began to collect the taxes in his father's name with the consent and knowledge of the President and Secretary of the Municipal Committee The President or the Secretary did not give any notice of this fact to the surety On a defalcation being made by the son the surety was sought to be made liable.

Held, that as the person had stood surety only for the personal honesty of the tax-collector and not of his son and as the kind of employment was such that it should have been conducted personally … the surety had given security, th… bound to something for which … (*Mosely, J*) H PIN SEIN v … PALITY. 177 … A …

——Ss. 134 and 139—*Discharge of surety—Credi-* …

when he pays the debt, he stands in the shoes of the creditor and he is entitled to enforce against the princi- … were available to the … urety is so co extensive … debtor, his right is … that of the creditor … enable the surety to enforce his right against the principal debtor, there are two essential conditions (i) that the debt itself must subsist, (ii) that his remedy against the principal must remain unimpaired. Consequently the creditor will be entitled to compel the surety to perform his …

entailed by the Debt Conciliation Act, on the surety in an aggravated form and hence the surety is discharged. (*Niyogi, J*) BABU RAO v. BABU MANAKLAL 176 I C 686=17 R N 70=A I R 1938 Nag 413.

——S 135—*Auction purchaser allowed to withdraw deposit on furnishing security to re deposit when asked—Surety bond executed—Purchaser when asked to deposit amount asking for time which was granted—Consent of counsel for decree-holder—Surety, if absolved from liability.*

Where in an execution case, the auction purchaser who had deposited the sale price in Court was allowed to withdraw it on furnishing security to re deposit when asked to do so, and on so being asked he asked for a month's time to deposit the amount which was granted … the counsel for … the Court be- … the surety to … ious orders. … under S. 135, Contract Act The bond was in favour of the Court and the Court had discretion to order the auction purchaser to deposit the amount at any date it liked and the consent of the counsel for the decree-holder was immaterial (*Bhide, J*) MOHAMMAD RAMZAN v MT. KHADIJA SULTAN BEGUM. 40 P L R 755= A I R 1938 Lah. 472.

——S 139—*Surety bond — Surety undertaking obligation on behalf of two defendants—Liability in respect of the amount decreed against the defendants—Suit dismissed against one defendant—Compromise decree passed against another defendant—Discharge of surety.*

In a prior suit, a surety gave a security bond, on … he bond ran thus: … y personal security, … pay to the plaintiff … signees any amount … against the defen- … ered from the same

CONTRACT ACT (1872), S 128.

defendants. The plaintiff in that suit entered into a compromise with one of the defendants as a result of which that defendant suffered a decree to be passed against him for the amount claimed in the plaint. The other defendant contested the claim and eventually the suit was dismissed against that defendant and no decree was passed in respect of the suit claim. The plaintiff's heir, being unable to recover the amount by executing the compromise decree, brought a suit to enforce the liability under the security bond.

Held, that before an obligation can accrue in favour of creditor, there must be a decree against both the defendants and there must be a failure to recover the money from both the defendants or their property. A compromise decree against one of the defendants cannot be held to be a decree against the 'defendants' within the meaning of the bond and the plaintiff cannot be heard to say that she has failed to recover the amount [illegible]

the suit, not merely barring of remedy of creditor. Hence the surety is discharged from his obligation. (*Pandrang Row and Venkataramana Rao, JJ.*) VENKANNA v. SANYASAYYA. 1938 M W N. 68= 47 L W 84=A.I.R. 1938 Mad. 422.

——S 178—*Applicability—'Good faith'—Meaning of.*

The words 'good faith' in S. 178, Contract Act, before its amendment bear the same meaning as is given in sub-S 20 of S 3 of General Clauses Act, though in terms that sub section may not apply to any Act earlier in date than the General Clauses Act. The general rule [illegible]

bank a receipt granted by the motor dealer to the salesman for the price of the car and that the enquiries made by the bank also showed that he (the salesman) was the owner of the car. There was nothing to put the bank on its guard. It was argued that the fact that the car bore a trade number should have put the pledgee on its guard and the bank by not insisting on the production of the RC certificate which would have shown the name of the owner was guilty of negligence and had therefore not acted in good faith.

Held, that there was nothing suspicious in the conduct [illegible]

was not guilty of negligence in not insisting on the production of it and that the bank had acted in good faith and was therefore entitled to protection under S. 178. (*Pandrang Rao and King, JJ.*) MADRAS AUTOMOBILES v. MODERN BANK, LTD., COIMBATORE. A.I.R. 1938 Mad. 545.

——S 178—*Object—Pledgee taking goods from person of whom he knew nothing—Pledge turning out to be offence and pledgor agent—Pledgee, if can retain property.*

S. 178 has been enacted in order to protect those persons who in good faith deal with persons whom they know to be mercantile agents, but of the details of whose agency they are not and cannot be expected to be aware.

CONTRACT ACT (1872), S. 182.

It is relied upon only in cases where the pledgee is aware that the pledgor is a mercantile agent. The agent referred to is an agent such as the pledgee might well suppose had power to pledge, but if the pledgee did not know him to be an agent at all he cannot have any reason to suppose that he had power to pledge. If he takes goods from a person of whom he knows nothing whatsoever and if it turns out that the person's pledging of the goods with him was a criminal offence and that the pledgor was a mercantile agent, then he can have no claim to retain the property. (*Mackney, J.*) AH CHEUNG v. AH WAIN. 176 I.C. 703=11 R R 76= 39 Cr.L J. 784=A.I.R. 1938 Rang. 243.

——S. 178 (before amendment)—*"Person who is in possession"—If includes owner.*

The words "a person who is in possession" as used in S. 178 of the Contract Act before its amendment includes an owner as well as a mercantile agent and are not [illegible] ... tells v. ... 276.

Pledgee handing over receipts to pledgor—If loses rights in property pledged.

A railway receipt is a document of title and a pledge of the railway receipt operates as a pledge of the goods, though by the general law a pledge of documents is not *prima facie* deemed to be a pledge of the goods. The pledgee does not lose his right of property as pledgee by parting with the custody of the railway receipts or by entrusting them to the pledgor or his agents or mandatories for the special purpose of convenient dealing with the goods by collecting them from the Port Trust and putting them into the pledgee's godowns. Such a procedure is the usual course of business and is either necessary [illegible]

——S. 178—*Validity of pledge—Burden of proof.*

Under S. 178 of the Contract Act, a pledge may get [illegible] ... than ... set ... wing ... party ... C. ... ROWGEE v. NIPPON YUSEN KAISHA. 67 C L.J. 276.

——S 182—*Agent—Person employed to sell unredeemed articles from pawn shop.*

The definition of an agent in S. 182, is wide enough and covers a person employed to sell unredeemed articles from a pawn shop on behalf of the employer. Such a person although a servant or a shop assistant, is an agent of the employer in the matter of selling such goods. (*Mackney, J*) AH CHEUNG v. AH WAIN. 176 I.C. 703=11 R.R 76=39 Cr.L.J. 784= A.I.R 1938 Rang. 243.

——S 182—*Commission agent—Position of.*

Commission agents are agents within S. 182 but are not agents pure and simple. They are agents up to a

point and to that extent they stand in a position of active confidence towards their principals, but beyond that they are not agents in the real sense of the term and the relationship between the parties from then on is one of debtor and creditor. (*Vivian Bose, J.*) KALYANJI v. TIRKARAM. 176 I.C 675= 11 R N. 65=A.I.R. 1938 Nag 254

——S 182—*Commission agent receiving goods as such and then selling them—Position of.*

Where a person receives goods from another as a commission agent and then

agent up to a certain point th

sale. Thereafter whether

while principal and not me

this is so or not must depend

case (*Vivian Bose, J*) KA

176 I C 675=11 R N. 65

——S 182—*Definition—Scope of*

Definition of agent given

embraces a servant pure and

therefore cannot be placed

(*Vivian Bose, J*) KALYANJI

176 I C 675=11 R.N. 65=A I R. 1938 Nag. 254.

——Ss 187 and

agent—Principal's li

against principal—E

unjust enrichment—I,

Where the agent's authority is defined in writing, it is doubtful if S 187 of the Contract Act can be relied upon

instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication. The limits of neces-

value of the property The absence of other funds in the hands of the agent at the time

not a necessary condition of the credit

against the principal This equitable

ed by the Contract Act (*Varadach*

rang Ra

——S

sioners—

Aim to file a suit for possession of estate and to conduct it—Provision for division of estate between them and stranger after recovery in suit in case of success—Death of one reversioner—Effect—Suit by stranger on behalf-

of all—Maintainability—Agency — If coupled with interest—Right transferred—If mere right to sue.

On the death of a Hindu widow who held her husband's estate, the estate, vested in *R* and *B*, sons of two brothers. After *R's* death, his sons (plaintiffs 1 to 5), along with *B*, executed on 21 11 1916, a document in favour of the 6th plaintiff who was a stranger. The said document provided for the 6th plaintiff filing a suit for possession of the estate on behalf of all the plaintiffs and *B*, and conducting it, and for the properties when recovered by the suit being

security or a part of the security and not to cases where

wards and incident-

cy having become

the plaint filed by

document, (5) that

there was no present transfer of a moiety of the reversioner's interest in favour of the 6th plaintiff, but only

assignors and the assignee, and the defendants who had no concern with that could not plead that the agreement was champertous so as to bar the maintainability of the suit (*Venkatasubba Rao, J*) VENKANNA v ATCHUTARAMANNA 1938 M W N 259=47 L W 492= A I.R. 1938 Mad 542=(1938) 1 M L J 610

exe-

ity to

art to-

revoca-

).

715.

ig interest in contract—

contract as such, if he

own

princi-

(*Tek*

678.

——S. 230—*Applicability—Pucca Arhtia*

Ordinarily the words "Pacca Arhtia" convey that the so-called agent is acting as a principal on behalf of th person with whom he buys or sells the commodities

CONTRACT ACT (1872), S. 230.

question. There can therefore be no question of the application of S. 230 of the Contr

(*Dalip Singh and Skemp, JJ.*)

LTD., v. BHARAT KRISHNA TRADII

177 I.C 985=A I

——Ss 230 and 60—*Money debtor to decree-holder's pleader in part payment of decrees—Pleader, if can be sued alone—Pleader's right*

decree- to the decrees and had the execution stayed for a certain period, but on failure of the judgment-debtor to pay the decretal dues in full within that period writs of attachment were executed against him resulting in payment of five of the decrees in full, and the pleader thereafter certified in Court the money paid to him as having satisfied the sixth decree in which the judgment debtor was only one of two judgment debtors, in a suit by the judgment-debtor against the pleader for the recovery of the amount paid to him

appropriating it to the unsatisfied decree (*M. C Ghose, J.*) BIDHU BHUSAN SEN v MOFIZUDDIN AHMED

42 C.W.N 1263

—— S. 235—*Basis of action under—Measure of damages.*

The basis of an action under S. 235 of Act is the implied warranty by the prc that he had the authority to act. The damages must accordingly in substance be the other party would have had from the representation that he was the authorise been true (*M. C. Ghose and R C.*

KISHORI PRASAD v. SECRETARY OF STATE.

42 C W N. 116=I L.R (1938) 1 Cal. 463= 176 I C.990=11 R C. 194=66 C L J. 592= A.I.R. 1938 Cal. 151.

——S 239—*Partner—Firm—If can be partner—Death of member of constituent firm—If dissolves main firm.*

40 Bom L R 995

CONTRIBUTION—*Co-defendants—Decree for costs—Payment by one—Right to recover if in proportion to interest affected by decree.*

Certain properties were mortgaged to who had advanced unequal amounts. obtained thereon and the properties were br Thereafter a third person obtained a de half the mortgaged properties were his and was not liable to attachment and sale The original mortgagees who were defendants in the above suit were directed to pay the costs of the plaintiff therein. Where such costs are realised from one of the defendants alone,

CO-OPERATIVE SOCIETIES ACT (1912), S. 2.

he is entitled to recover from the other defendant, a

——*Co-defendant—False defence jointly put forward—Costs awarded to plaintiff—Claim for contribution.*

Where different sets of defendants had jointly put forward a false defence in a previous case and had been ordered to pay the costs of the opposite party, any of them is entitled to maintain a suit for contribution against the others. In the absence of any direction to the contrary in the decree, the costs should be apportioned among the sets equally. (*Tek Chand, J*) SARAN DAYAL v. DAL CHAND. 177 I C. 847= 40 P.L R. 469=A I.R 1938 Lah 579.

——*Liability for—Mahomedan co-heirs—Realisation of dower decree from non taluqdari property—Taluqdari property, if liable to contribute.*

Where a shia Mahomedan died leaving both taluqdari and non-taluqdari property and one of the widows r from out e another taluqdar i property es to the extent to which execution was levied against the non-taluqdari property in respect of the dower debt, it was held that the plaintiffs had a right to contribution in respect that the taluqdari property was liable for the

4 B R. 606=67 C L J. 350-13 Luck 494= 1938 O A 508=1938 P W N. 514= 1938 O L R 282=1938 O.W N 581= 1938 A L R 415=40 Bom L.R 843= 1938 A L J. 843=A I R 1938 P C 169= (1938) 2 M L J. 210 (P.C.).

——Right to—Ex partners or persons tracing relationship to dissolved partnership—Right of contribution in RACT ACT, M L J 287.

OF 1912) *ird against*

——S 2 (c)—"*Member*"—*Hindu joint family—If can be member.*

A joint Hindu family can be a member of a Co-operative Society. (*Horwill, J.*) VILLUPURAM

society and taking loans—Liability of joint family.

The fact that the bye laws of a co-operative society established under the Co-operative Societies Act of 1912 do not expressly state that the membership of the

society is open to a Hindu joint family is no justification

sentative capacity with the consent
members of the family, though he ma
the karta of the family, and that the
him were for the purpose of and c
family, *i.e.*, for the purpose of purc
for the joint family it must be held that the money was borrowed for the necessity and benefit of the entire joint family, because the member represents the entire joint family in his dealings with the society. In such a case the society can proceed against the joint family properties including the properties purchased out of the money borrowed for the debts incurred by the member, although that member is not described in the registers of the company or in the order for contribution as representing his family. (*Courtney-Terrel, C. J., Fazl Ali and James, JJ.*) BINDESHWARI PRASAD *v.* SHIVA DUTT SINGH. 176 I C. 49=4 B R 661=11 R P. 43=1938 P W N. 329=19 Pat L T 328=**A I R. 1938 Pat. 315. (S.B.).**

——S 33—*Resolution passed at annual general meeting sanctioning dividend—Considerable portion of profits unrealised—Resolution, if* ultra vires.

CO-OPERATIVE BANK, LTD.
I.L.R (1938) 2 Cal 144=42 C W N 461=A I R 1938 Cal 394

——S 42—*Award against a society—Liquidator appointed for such society—Execution against—If available.*

Where the award is against a
liquidation of that society cannot
so far as the executability of th
members are concerned. He is

——S. 43—*Bengal Government R*
for dividend on declaration that
extraordinary general meeting ref
ultra vires—*Jurisdiction of Civil Co*

Where the plaintiff sues a Co-op
recovery of a certain sum alleged to be due to him as dividend on certain preference shares held by him, on a declaration that the constitution of the Board of management was illegal, that it had no authority to call an

extraordinary general meeting of the shareholders, and

powers given by sub-S (1) and the items mentioned therein do not exhaust the list of matters on which rules might be framed by the Local Government. Accordingly R. 28 (3) of the Rules framed by the Local Government which relates to distribution of profits in case of societies with limited liability and which is framed with a view to carry out the purpose of the Act as laid down in S. 33 is not *ultra vires*, although there is no specific item mentioned in S. 43 (2) relating to distribution of profits in case of Societies with limited liability. (*Mukherjea, J*) HARA DAYAL NAG *v.* CHANDPUR CENTRAL CO OPERATIVE BANK, LTD. **I L R. (1938) 2 Cal 144=42 C W.N 461=A I R 1938 Cal 394.**

——S 43—*Rule-making power of Local Government—Extent of—R. 22, Sub Rr. (2), (5) and (6)—If* ultra vires

ses of sub-S. (2) of S 43 of the
Act are only illustrative and do
l rule-making power to implement
of the Act conferred upon the
(1) of the said section.
framed by the Local
nferred by S. 43 of the
er and Biswas, JJ)
DACCA CO-OPERATIVE INDUSTRIAL UNION, LTD *v.* DACCA CO-OPERATIVE SANKHA SILPA SAMITIES, LTD **I.L.R (1938) 2 Cal 103=178 I C 363=68 C L J 353=42 C W N 391=A I R 1938 Cal 327**

——S 43 (1)—*Rules framed under—Award against*

embers
Pura-
NTRAL
604=
82=
A I.R 1938 Nag 434.

——S. 43 (2) (1)—*'Dispute'—Meaning of.*

There would be a dispute so long as a claim is asserted by one party and denied by the other be the claim a

CO-SHARER.

CHANDRAMANI DEBI v. CHANDANMULL.
I.L.R. (1938) 1 Cal. 206 = 176 I C. 114 = 11 R C 42 = A I R. 1938 Cal 243

rights—Partition of estate—Right of mortgagee or co sharer getting land on partition to eject raiyat.

The leasing out of "bakasht" land to raiyats on an adequate rent is an act of ordinary management of property such as a mortgagee in possession is entitled to do. When the raiyats so admitted cultivate the land and deliver rent to the mortgagee ...

for two years they would acquire occupancy right and ... s representa- representa- ... on a parti ... J) RAJA RAM RAI v. NIRANJAN RAI. 17 Pat. 143 = 175 I C. 943 = 11 R P. 35 = 1938 P W N 371 = 19 Pat L.T. 387 = 4 B.R 658 = A I R

——*Mutual relation—Person open ... wall of his house abutting on common ... for injunction—If lies.*

Where a person opens a door-way ... own house abutting on a courtyard wh... property of the parties and each one has a door to his house opening in the courtyard, the opening does not amount to an ouster of the other co-owners from the court-yard and the other co-owners cannot bring a suit for injunction to restrain him from opening the door unless an excessive user or a user inconsistent with that to which it has been put before, has been proved. (*Tek Chand, J*) KHOTA RAM v. TIMKU RAM.
178 I.C. 289 = 40 P L.R 746 = A I R. 1938 Lah 487.

——*Mutual relation—Trustee for payment of rent committing default—Purchase by such trustee—Effect of.*

If either a co sharer or a person ... trustee for the payment of rent defaul... of rent with the express object of ge... interest of the other co sharer, that ... taken to enure for the benefit of the pe... (*D. N. Mitter and Patterson, JJ.*) MALEEH v. SHASI MOULI NAG.

——*Partition—Alienation of share by one co sharer—Alienee getting po... Suit by other co-sharers for partition—Equities in favour of alienee—Right to retain ... purchased—Prospective rights of ... from latter as against general ... Partial partition* *See* MAHO... SHARERS. 4...

——*Partition—Portion of Ma... other Mahals—Procedure—Altern...*

Where a portion of a Mahal ... other Mahals, if a co-sharer of tha...

COSTS.

partition, there are two alternatives open. Either the partition can proceed of the area in that particular Mahal apart from the '*Minjumla*' area or else the appli-...

therefore only some of the co sharers who have executed a mortgage enter into a compromise with the mortgagee, whereby they agree to deliver some land to mortgagee in consideration of his reducing the mortgage charge and releasing rest of the property from the mortgage, the co-sharers entering into the compromise are bound by it to ... of their share and the compromise is not ... ely because one of the mortgagors is not a ... (*Bhide, J*) KISHAN SINGH v. PRITAM
A I R. 1938 Lah. 737.

COSTS—Co defendants—Decree for costs against—Payment by one—Right to contribution. *See* CONTRIBUTION—CO-DEFENDANTS.
1938 A W R. (H C.) 637.

——*Discretion—Dismissal of suit—Right of defendant—Defendant not proving case set up by him—If ...*

——*Mortgage action—Discretion—Personal decree for costs against non mortgagor—If can be passed.*

A decree for costs personally against persons other than the mortgagor can be passed in a mortgage action. ...

——*Solicitor's charges—Claim to more than scale ...*

have done a substantial amount of work which will ...

COTTON GINNING AND PRESSING FACTORIES ACT (1925), S 9.

KISHORE. 175 I.C. 112 = 10 R B. 523 =

Other creditors impleaded as defendants
minary decree—Court granting not whole c
but only dividends at certain percentage of 1
payable by them. *See* COURT-FEES ACT, S 11.

43 C.W.N. 52 = A.I.R. 1938 Cal. 785.

——*Ascertainment of—Looking to substance of plaint—Permissibility—Court-Fees Act—Rules of construction.*

Though the Court Fees Act is a fiscal enactment and its provisions have therefore to be strictly construed yet

the language of the relief claimed in the plaint A Court ought not to allow itself to be deceived by the language used for evading the payment of proper court-fee by concealing the real purposes of the suit. (*Srivastava, C J, Zia ul Hasan and Smith, JJ*) ROOP RANI *v.* BITHAL DAS 13 Luck

10 R O. 158 =

A.I.R

——Procedure—Duty of Court-
tional Court fee necessary and
necessary amendments instead of
Court-fee and rejecting plaint
Propriety—Power of Court to di
PRACTICE—PROCEDURE.

——*Suit for possession—Pro dedicated*

A mere intention to dedicate property for religious purposes is not sufficient to convert that property into religious property. Court fee to be paid for recovery of possession of such property will be *ad valorem*. (*Mackney, J.*) DAW SEIN *v.* MA MAI MA.

178 I.C 232 = A.I.R. 1938 Rang 303

——*Value for purposes of—Appeal against order making decretal amount recoverable from certain property*

Where a decretal amount has been ordered to be recovered from a certain property and an appeal is preferred to get that property released from
the value for the purposes of court-fee
price of the property or the decretal amou
is less (*Almond, J C and Mir Ah*

struction—Language of plaint. *See* COURT FEES—ASCERTAINMENT OF. 1937 O W.N 1186 =

construction must be given to s. 3 and if a particular fee could have been imposed under the High Courts Act or the Government of India Act, it is payable in virtue of the power conferred by that Act within the meaning

COURT-FEES ACT (1870), S. 7.

of the section, even although the High Court purported to impose the fee under a power derived from some other source. R. 204 of the Insolvency Rules (Calcutta) made under S. 112 of the Presidency Towns Insolvency Act could have been made by the High Court under the powers conferred on it by S. 15 of the Indian High Courts Act and the fees prescribed thereby are accordingly

consequential relief—Valuation by plaintiff—Revision—Power of Court.

S 7 (iv) of the Court-Fees Act is subject to the provisions of S. 8 c) of the Court-Fees (Bengal Amendment) Act, 1935 If, therefore, in a suit to obtain a declaratory decree in which consequential relief is prayed, the

——**(as amended in Madras), S 7 (iv-A)**—*Applicability—Ex-minor—Suit to set aside alienation by guardian and for possession of alienated property—Court fee—Valuation.*

——**(as amended in Madras), S 7 (iv-A) and Sch II, Art 17 A (iii)**—*Applicability—Suit by Hindu widow—Prayer for declaration that defendant not adopted by her—Further prayer that deed of adoption executed by her in his favour be declared void and cancelled—Court fee payable—"Document securing money"—Meaning of.*

The substance of the claim made by a plaintiff, a Hindu widow, in a suit in a Subordinate Judge's Court was to have it declared that the first defendant was not adopted by her to her husband and that a certain deed
he first defen-
On the first
ing the relief
a court-fee of
, valuing it at Rs. 1,000 It was found that
-value of the properties both movable and
, affected by the declarations was over

Held, (1) that the court-fee in respect of the first relief of declaration as to the status of the first defendant

plaintiff and the court-fee paid by her were therefore correct

Held, further, that the documents which required to be set aside were documents whereby rights are

COURT-FEES ACT (1870), S. 7 (iv) (b).

ferred or released such as sales, gifts, mortgages, leases, releases, etc., and to fall under S. 7 (iv A), the document sought to be set aside must of itself have secured the property, i.e., there must ha
the said property or a release of
would operate to extinguish th

W 623= A.I.R 1938 Mad 824

BISHAN RANI 40 P.L.R 2=A.I.R

——S 7 (iv) (b) and (c)—Suit for
by defendant that part of property does
joint estate—Court-fee payable on plain
FEES ACT, SCH II, ART. 17 (vi)

1937 Rang. L R 447.

——S. 7 (iv) (c) and (v)—*Applicability—"Declaration"—Suit for possession of land—Anticipation of possible defence on ground of disposition of property—Defendant challenging title of plaintiff—Court fee payable.*

There is much misunderstandir
meaning of the word "de laratior
remedy to be granted by a Court
up of describing a suit for possessic
suit "for a declaration of title toget
possession of the property in suit,"
ration" has been used to mean wha
ly be described as the finding of fact necessary before the decree for possession can be granted In every suit for possession the plaintiff cannot succeed u
proves the facts necessary to establish his title

possession S 7 (iv) (c) has application to declarations properly so called, such for instance as declarations of
holds a
of a will
It has no
sense of a
essary for
granting a decree for possession It is not in the least necessary for a plaintiff in a su
a declaration If he happens
title in addition to an order f
may and should treat the case

COURT-FEES ACT (1870), S. 7 (iv) (c).

and there cannot be any pretence that the claim is one for a declaration with consequential relief falling under S. 7 (iv) (c) Merely because the defendants challenge

——S. 7 (iv) (c) and (v)—*Applicability—Partition suit—Plaintiff claiming to be in joint possession of pro-*

second relief is concerned under Art. 17 (vi) of Sch. II of the Court-Fees Act. A denial by the defendant of the plaintiffs' joint possession at the date of the suit does not alter the character of the suit. If the defendant succeeds in establishing his plea that the plaintiffs were

——S. 7 (iv) (c)—*Applicability—Suit to declare*

v) (c)
TTAJI

422= A.I.R. 1938 Nag 183.

——S. 7 (iv) (c) and Sch II, Art. 17 (iii)—*Applicability—Suit by a party to a decree to declare it illegal and void—Court fee—Consequential relief, if implied.*

Where a party to a decree sues for a declaration that it is illegal and void, the granting of such a declaration in his favour has the effect of setting aside
obligations there-
relief may not be
relief is implicit in
onsequence of it, it

——Ss. 7 (iv) (c) and 7 (5)
cellation unnecessarily asked—
applies.

Where a plaintiff asks for
quential relief, though it is enough for his purposes to

——Ss 7 (iv) (c) and 8 C—*Plaintiff suing for declaration, and praying for injunction besides other reliefs—Power of Court to revise plaintiff's valuat*

Where the plaintiff sues for a declaration and
for, besides other reliefs, a perpetual injunction
consequential relief flowing from the declaration, the suit, so far as it relates to these two reliefs, is a suit for a declaration with a consequential relief within the

that purpose may hold such enquiry as it thinks fit (*Bartley and Nasim Ali, JJ*) ANATH NATH BANERJEE *v.* KALIMATA THAKURAIN

42 C.W N. 504=I L R (1938) 2 Cal 64= A I R 1938 Cal 865

——S. 7 (iv) (c)—*Suit falling under—Person in possession of an item of gifted property seeking cancellation of gift deed—Valuation*

Where a suit falls under S 7 (4) (*c*) of the Court fees Act, the plaintiff cannot put any arbitrary value on his consequential relief. Where a person in possession of an item of gifted property sues for a declaration and consequential reliefs of cancellation of the gift and possession of the remaining
Court fee only on the value
of which is asked for. (*N*
v. LALSINGH.

——S 7 (iv) (c)—*S*
failing to fix value of suit for purposes of court fee but separately valuing his suit for jurisdictional purposes at certain sum—Such sum, if should be taken at value of relief for purpose of court-fee.

The assessment of court-fees on a suit falling under any of the clauses of S 7 (iv) depends on the amount shown in the plaint or memorandum of appeal, as the case may be, as the value of the suit for purposes of court-fee, but this in turn must depend upon a figure to be fixed by the plaintiff himself If the plaintiff fails to fix such a figure expressly for court fee purposes on the erroneous supposition that the suit is not covered by S. 7 (iv) (*c*) and separately values his suit for jurisdictional purposes at a certain figure, he should be taken as having valued the relief sought by him at this amount He should not be taken as having failed to value his relief within the meaning of the section and so should not be required to fix the value of the relief for the first time The plaintiff cannot have the benefit of a higher valuation for selecting a superior forum for the hearing of his case and pay a court fee on a lower valuation. (*Beckett, J*) BELI RAM *v* DASONDHA SINGH

val

sou
of the Court Fees Act, if the valuation appears to be arbitrary and unreasonable. But a Court should not endeavour to correct a plaintiff's valuation except in a clear case where the disparity is so great as to show that the plaintiff has not endeavoured to fix a fair value at all,

is unreasonable
right litigated.
IOTIRAM SITA-
38) Nag. 558=
1938 N L J. 327 (F B.).

Suit for declaration that defen-
execute certain decree—Valua-

ion that the defendant was not entitled to execute a certain decree falls under S. 7 (*iv*) (*c*) of the Court Fees Act, and it is for the plaintiff to

204.

——S 7 (iv) (c)—*Suit for declaration of title to provident fund money and for injunction—Proper ... decision on valuation— Revision.*

ed for a declaration of title of
provident fund money and for
defendant from withdrawing
that money, it cannot be said that there is no objective standard of valuation, and the correct valuation of the relief claimed is the amount of the provident fund If in such a suit the Court accepts the plaintiff's valuation holding that the exact money value of the claim cannot be ascertained, and the provident fund money exceeds its pecuniary jurisdiction the Court in trying the suit will exercise its jurisdiction wrongly and its decision accepting the plaintiff's valuation is open to revision under S. 115, C.P. Code (*S. K. Ghose, J*) URMILA BALA *v.* BINAPANI BISWAS. 177 I C 893= 11 R C. 287=42 C W N 192= A I R. 1938 Cal 161.

relief coming under Art. 17 (iii) of the second schedule of the Court fees Act, or whether it is a decree with consequential relief governed by S 7 (iv) (*c*) of the Court Fees Act, depends not on whether or not the plaintiff was a party to the decree which he is seeking to avoid but on whether or not the relief claimed comes under S 42 of the Specific Relief Act (*Thomas, C J., Zia-ul Hasan and Yorke JJ*) BEPIN SINGH *v* BHAGWAN SINGH 177 I C 550=11 R O 54= 1938 O A 692=1938 O W N 889= 1938 O L R 425=A I R 1938 Oudh 201 (F B).

——Ss 7 (iv) (c) and 8 (c)—*Suit for rectification of* solenama *on which preliminary decree was made in partition suit—Valuation by plaintiff—If final*

In a suit for rectification of a *solenama* upon which a preliminary decree was made in a partition suit, on the ground of fraud or mutual mistake of parties, the value of the property which would be affected by the preliminary decree which would be made in the partition suit if the plaintiff ultimately succeeded in his suit, cannot be taken as an objective standard for the purpose of determining the value of the relief in the suit In the

declaratory decree and injunction—Power of Court to correct plaintiff's valuation

In a suit for a declaration of title to a certain property and for an injunction falling within Cls (*c*) and (*d*) of S. 7 (*iv*) of the Court-Fees Act, the amount of court-fee

COURT-FEES ACT (1870), S. 7 (iv) (f).

is, no doubt, computed according to the amount at which the relief sought is valued in the plaint. But where it is possible for the Court on the facts stated to question the plaintiff's valuation, it can exercise its powers of correction ... ANNAPU

——S ...
tion of partnership and accounts—Appeal—Court-fee payable—Basis

Where a defendant prefers an appeal against a final decree in a suit for dissolution of partnership and accounts he has to pay Court fee on the amount mentioned in the final decree ... valuation put in the plain ... uncertainty about the amount ... after the final decree (*Grue* ... *v.* DANDAS RAMGOPAL.

——S 7 (iv) (f)—*Suit f* ...
Appeal—Valuation—If to be ...
if may be changed

An appellant against a decree dismissing a suit for an account cannot in appeal change his valuation when the subject matter of the appeal is the same as in the trial Court. The scheme of the Court-fees Act does not allow the plaintiff to change in appeal the valuation adopted by him in the plaint in the trial Court. (*Leach, C.J., Varadachariar and Pandrang Row, JJ.*) NARAYANAN CHETTI *v.* PERIAPPAN

I.L.R. (1938) Mad. 1031 = 48 L.W. 454 = 178 I C 159 = 1 ...

A.I.R. 1938 Mad 887 = (1938) 2 ...

——S. 7 (iv) (s)—*Applicability*—
—*Appeal by defendant—Court fee—* ...
liminary decree and appeal against final decree—Distinction as regards Court fee payable.

A defendant appealing from a prelimina... an account has to stamp his memorand... d

... peals against a ... the amount of ... cases where he appeals only against a portion of the decree S. 7 (iv) (*f*) applies to appeals by a defendant. (*Leach, C.J., Varadachariar, Burn, King and Venkataramana Rao,* ...

...
for partition of Thavazhi properties.

Where the suit is by a junior member for partition of the Thavazhi properties, for the pu... the Court fee payable, the point ... whether on the date of suit it ... defendant's possession was posses... Thavazhi. If he is not in such possession, Court-fee should be paid under S. 7 (*v*). (*Varadachariar J.*) MANAVEDAN *v.* MANAVEDAN. (1938) M.W.N. 131 =

A.I.R. 1938 Mad 474

——S. 7 (v)—Applicability—Suit for possession—Defendant challenging plaintiff's title, and plaint anticipating possible defence on that ground—Suit, if one for possession or falls under S 7 (*iv*) (*c*)—Court fee. *See* COURT-FEES ACT, S 7 (*iv*) (*c*) AND (*v*).

18 Pat L T 977 = A I R 1938 Pat 22 (S B).

——S. 7 (v) and Sch. II Art 17 (vi)—*Applicability—Suit for possession by partition—No joint possession—Property not joint family property—Court-fee.*

COURT FEES ACT (1870), S. 7 (v) (d).

If a person is out of possession of property to which he considers he is entitled on the strength of any right, title or interest that he claims in relation thereto, and seeks to obtain possession thereof from the person who ... ss of ... ne for ... ns of ... casion arises to invoke Art. 17 (vi) of Sch. II to the Court Fees Act. (*Addison and Din Mahomed, JJ.*) MT. SAT BHAWAN *v.* RAM KISHEN SINGH.

I L R 1938 Lah 240 = 176 I C 762 = 11 R L 235 (2) = 40 P L R 27 = A I R 1938 Lah 275.

...

A.I.R. 1938 Mad. 278 = (1938) 1 M.L.J. 29.

——S. 7 (v) and Sch. II, Art 17 (vi)—*Suit for possession of temple properties—Court fee payable.*

In a suit for possession of lands and buildings against the defendant alleging that the plaintiff is a Mahant of certain temple and that the property mentioned in the plaint is owned by the idol which is installed in that temple and that the defendant has taken illegal posses- ...

... property. This, however, is subject to the proviso where the properties are not capable of being valued ...

... directly productive of any income for the temple (*Jai Lal, J.*) HARI DAS *v.* RAJA RAM. 40 P.L.R. 113.

——S 7 (v) (d) and Oudh Civil Rules, R. 1 (d) and (iv)—*Suit against trespasser by tenant for possession—Calculation of market value.*

Where a suit is by a tenant to recover possession from a trespasser, it falls under cl. (v) (*d*) of S. 7 of the Court fees Act and the market value has to be calculated according to R IV of the Oudh Civil Rules, R 1 (1) has no application to such a case (*Yorke J.*) BHULAI *v.* GAYA DIN. 174 I C 550 = 1938 R D 488 = 1938 O L R 195 = 1938 O A 423 = 1938 A W R (C C) 42 = 10 R O 274 = ... W.N. 453 = A I R. 1938 Oudh 139.

... and (e)—*Suit by under proprietor and with building and guava grove thereon—Separate court fees—If payable.*

A person claiming under proprietary rights in land by virtue of a permanent lease executed in his favour brought a suit for possession of the land and the building and a guava grove thereon The building was not a tenant's house or any other building necessary for the enjoyment of the land but a substantial structure used as a tannery Similarly the trees were not self grown but were planted

Held, that in such circumstances the building and grove could not be said to be appurtenant to the land and hence a separate court fee under S. 7 (*v*) (*e*) should be paid on the market value of the building and the grove.

COURT-FEES ACT (1870), S. 7, (v).

(*Thomas and Zia-ul-Hasan, JJ.*) JWALA DEVI *v.* AHMAD HASAN. 172 I.C. 297 = 1938 O W N. 23 = 1938 O.A. 123 = 10 R O. 168 = A.I R. 1938 Oudh 40.

——**S 7, Cl. (v) (e) and Sch. II, Art. 17 (6)**—*Suit for possession of temple on an agreement for*

(6) of the Court-Fees ... stands as a temple ... and has no market va ... (*e*) of the Act. (*Niyo* ... LAL

——**S. 7 (xi) (cc)**— ... *mer tenant who set up a title in himself.*

S. 7 (xi) (cc) applies only to a suit by landlord for recovery of immovable property from his tenant, which includes a tenant holding over after the determination of the tenancy. *P* purchased a house and asked *D* who was a tenant of his predecessor to attorn to him. *D* repudiated *P's* title ... own. On *D* continuing to set u ... him with a notice to vacate the ... his not paying the arrears of ren ... do so brought a suit for recovery of the house from *D.*

——**S 7 (xi) (cc) and Sch I, Art. 1**—*Applicability—Suit for possession from tenant—Decree—Award of compensation for improvements—Appeal by plaintiff against improvements—Court fee paya* ...

In suit for possession of properties f ... decree is passed conditional on the ... certain sum of money for value of impr ... the defendants, the plaintiff appealing against the decree awarding compensation, there being no question about possession, must pay court fee on the value of improvements The subject of the appeal is the value of improvements and not possession of land as in the suit in the lower Court, and it is not therefore enough if the appeal be valued as a suit for possession. (*Madhavan Nair O.C* ... RAYAN

——**S** ... *cipal assess* ... *Court to enquire into plaintiff's valuation*

In a suit brought by the plaintiff on behalf of himself and as representat ...

treating the suit as falling under ... Court Fees Act, to enquire into the ... if it is of opinion that the subje ... wrongly valued Even if the pray ... redundant and S. 7 (iv) (c) does ... open to the Court to consider the ... in order to determine the proper forum. (*S K. Ghose,*

COURT-FEES ACT (1870). S. 11,

J.) KUMUDINI KANTA MUKHERJEE *v.* MUNICIPAL COMMISSIONER OF THE BARASAT MUNICIPALITY. 42 C.W N. 315.

——**S 10**—*Court-fee—Question as to—Time for determination*

... r for the Court to ... of court-fee until ... he order passed in ... A.I.R 1935 Lah. ... IS RAM *v.* SOHAN ... 6 = 11 R L. 354 = 1938 Lah 311.

——**S. 11**—*Applicability—Administration suit by a creditor—Other creditors impleaded as defendants before preliminary decree—Court granting not whole of their claim but only dividends at certain percentage of it—Court fee payable by them*

The Court Fees Act is a fiscal statute and must be ... e Act, therefore, cannot ... dministration suit by a ... it is the plaintiff who ... e carriage and conduct of the proceedings. Other creditors impleaded as ... e position of a ... rough adminis- ... suit up to a ... all purposes, ... f the Court is ... a creditor for administration of the estate of a deceased debtor, other creditors are impleaded as party defendants before the preliminary decree and they set out in their written statements their claims against the estate of the deceased aggregating to certain amount, but the Court has allowed certain dividends to be paid to the creditors on a basis of certain per cent. upon the amounts found to have been due to them, those creditors cannot be ordered to pay court fees upon the entire amount of their claims,

——**(as amended in Madras) S 11**—*Applicability—Suit for possession and mesne profits past and future—Decree awarding specific sum for past profits and also awarding future profits at definite rate per year—Non-direction of inquiry into mesne profits—If in contravention of O 20, R 12—"Final decree"—Application for execution—Court-fee on future profits—Pay-*

... movable property with ... he Court by its decree ... fits prior to suit and ... suit until delivery of possession at the rate of Rs. 60 per annum, without directing any inquiry at all Plaintiff applied for deli- ... s award and also ... t of mesne profits

... an inquiry, to pass a decree finally determining the

COURT-FEES ACT (1870), S. 11,

amount of profits payable subsequently to the suit, if it

RAN CHETTI. I L R (1938) Mad 1050 = 1938 M W.N. 286 = 47 L.W. 808 = A I R. 1938 Mad. 727 = (1938) 1 M L J. 750.

——S. 11—*Court-fee ordered to be paid by decree not paid—Application for execution—If maintainable.*

The mere fact that court fee had not been paid on a decree granted does not prevent the decree holder from making an application for execution and all that S. 11 provides is that the decree should not be executed. 34 Bom. 189 and A.I.R 1930 Nag. 241, Rel. on. (*Dalip Singh, J*) UTTAR CHANDKAPUR AND SONS *v.* SAYAD HAMID ALI. 178 I C. 202=

——S. 12 and C P. CODE

against order returning plaint ... per Court—Determination of ... jurisdiction—If barred by S

Where a plaint is returned for presentation to the proper Court, as being beyond the Court's jurisdiction and an appeal is preferred against that order, it is open to the appellate Court to go into the question relating to the court fee and decide that the lower Court had juris-

does not apply ...

which the suit

section would a

of principle, th

impaired by S.

MOTIL AL *v.* Si

19

——S. 12—

Subsequent variation of.

When a Court has p

correct court fee payabl

it is not open to that Co

at the instance of a part

1 M.L.J. 89 and (1935) 69 M.L.J 439, followed (*Pandrang Row, J.*) DURGIAH, *In re.* 48 L.W 461 = (1938) 2 M.L.J. 547

——S 12—Scope—Interference—Appeal requiring *ad valorem* court-fee filed as miscellaneous appeal and allowed—Application by respondent after remand for stay of proceedings until payment of proper court-fee—Order rejecting—Revision—Interference. *See* COURT-FEES ACT (AS AMENDED IN BIHAR AND ORISSA), SCH. I, ART 1 AND SCH. II, ART. 11. 18 Pat.L T 864.

——S. 12 (ii)—*Deficit court-fee — Realisation—Powers of appellate Court—Appeal with reference to part only of subject matter of suit.*

Where only a part of the subject-matter of the suit is the subject of appeal and is before the appellate Court, that Court acting under S. 12 (ii) of the Court Fees Act can realise the deficit court fee only in respect of that part and not on the entire subject matter of the suit (*Venkatasubba Rao and Abdur Rahman, JJ.*) SECRETARY OF STATE *v.* SUBRAMANIAN CHETTIAR. I.L.R (1938) Mad 309 = 177 I C 904 = 47 L W. 70 = 1938 M W N. 169 = A I.R. 1938 Mad. 278 = (1938) 1 M.L.J 29.

——S. 13—Refund—Appeal from decree under O. 20, R. 12 (2)—Remand—Right to refund of court fee. *See* COURT FEES ACT (AS AMENDED IN BIHAR AND

COURT-FEES ACT (1870), S. 19-D,

ORISSA), SCH. I, ART. 1 AND SCH. II, ART. 11. 18 Pat L T 864.

——S. 13—*Scope of—Refund of court fee paid in lower appellate Court—Power to order.*

The words of S. 13 of the Court-Fees Act do not appear to contemplate the grant of a certificate in respect of court fee paid in the lower appellate Courts. (*Pandrang Row and Abdur Rahman, JJ.*) SIVANAGALINGAM PILLAI *v.* AMBALAVANA PILLAI (1938) M.W.N. 161 = 47 L W. 300 = A I R. 1938 Mad 479.

——S. 17—*Applicability—Suit by assignee of mortgagee rights against mortgagee, mortgagor and his surety—Separate court fees—If payable.*

S 17 of the Court-Fees Act is inapplicable to a suit by an assignee of mortgagee rights against mortgagee, the mortgagor and his surety, as the cause of action ... use of ... separ- ... ashid, ... 566.

——S. 17—"*Distinct subjects*"—*Two reliefs claimed alternatively on the same cause of action—If to be valued separately for purposes of court fee—Separate court fee—Necessity.*

Where two reliefs are claimed in the alternative in ... ey cannot be con- ... in the meaning of ... in respect of a set- ... holder, his rever-

174 I C 983 = 47 L.W 64 = 10 R M. 749 = 1937 M.W.N. 1252 = A I R. 1938 Mad. 241 = (1938) 1 M L J. 139.

——S. 17—*Sale of land—Suit by plaintiff for its possession as owner or in alternative by pre emption—Court fees.*

If a plaintiff prays for one of two reliefs in the alternative, based on one cause of action, the value of the suit for purposes of court fee is determined by the higher of the two reliefs claimed. Where the plaintiffs sue for possession of land alleging that they are the owners and that defendant No. 2 had no right to sell it to defendant No. 1 and pray in the alternative that if they are not found to be the owners, they have a preferential right of pre emption there is only a single cause of action in the suit, namely, the sale of the property by defendant No. 2 in favour of defendant No 1; but in respect of this cause of action two reliefs are claimed in the alternative. To such a suit, S 17 of the Court Fees

trustee for other coparceners—Death of coparceners—Application by survivors for Letters of Administration—Liability to pay court-fee—Claim to exemption as trust property—Sustainability—Sch. I, Art. 11.

COURT-FEES ACT (1870), S. 19-I,

When a person chooses to apply for Letters of Administration, whether the Letters are
sary or not and they are granted, he
per court fee according to Art. 11, Sch
Fees Act, S. 19 D of the Court-Fee:
any way exempt from payment o'
obtained by a coparcener of a Hind
respect of property which he takes by survivorship, and not by inheritance as heir. A co-sharer member of a joint Hindu family interested to the extent of an undivided share in the whole of the joint family property cannot be held to be "trustee" for the other co-sharers within the meaning of S. 19 D. Whether an application by the surviving coparceners for Letters of Administration in respect of the undivided share of a de-
ceased
be dead
made, w
of Adm
can be had.
D GUPTA *v*
7 Pat 542.
C. P. Code

—Probate or letters of administration in *forma pauperis*
—Power of Court to issue *See* C. P. CODE, O 33
47 L W 731

——S. 34 (3)—*Charge of an offence under—Facts to*

Held, that it was not enough to sustain the charge
(*Guha and Biswas, JJ.*) RAMKRISHNA
PEROR 174 I C 513=
39 Cr L J 417=42
A I R 1

——Sch I, Art 1—*Appeal from mortgage decree for interest disallowed—Court-fee paid sufficient only to cover interest disallowed on on*
Duty of appellate Court

Where the plaintiff appealed fr
as regards the amount of interest
pay the full *ad valorem* court fee, but the court fee paid was, however, sufficient to cover the amount of interest disallowed on one of the
which the decree was passed, it is th
late Court to ask the appellant
appeal he wished to have decided
the amount of court-fee paid
Mohammad, JJ.) JOTI PARSHAD *v* GIRNARI MAL
40 P L R 123

—— Sch. I, Art 1 and Sch II, Art 11—Applicability—Appeal under S 23, U. P Agriculturists' Relief Act—Court fee payable *See* U. P.
RELIEF ACT, S 23 1
A

—— Sch I, Art 1 and Sch I.
Applicability—Claim of equitable set-off in respect of damage to property—Sustainability

In a suit to recover the cost of the construction of a house for the defendant as per contract, the defendant claimed to set off a certain sum on the ground of damage caused to his property by the plaintiff. On a demand for court fee, the defendant contended that it was an equitable set off and as such no cour
sary It was held that there was nothi
the claim for set off was any other
claim to set off. In no sense could
off be said to be a claim in equity. Th

COURT FEES ACT (1870), Sch, I, Art, 1,

Court Fees Act as amended by the IV Sch. of the C. P.

——Sch. I, Art. 1—*Applicability—Decree of Special Judge under S. 14, U. P. Encumbered Estates Act—Appeal from—Court-fee—Sch II, Arts 11 and 17.*

An appeal from a decree passed by the Special Judge under S 14 of the U. P. Encumbered Estates Act falls under Art 1, Sch. I of the Court Fees Act and *ad valorem* court fee has to be paid. Neither Art 11 nor Art.
Allsop,
TAP *v.*
230=
88=
123=
1937 A.L.J. 1373=1938 A W R (H C.) 22=
A I R 1938 All 97 (F B.).

——(as amended in Bihar and Orissa), Sch. I, Art 1 and Sch. II, Art. 11—*Applicability—Decree for mesne profits after inquiry under O 20, R. 12 (2)—Appeal—Court-fee—Ad valorem fee on decree amount—Appeal valued as miscellaneous appeal—Appeal allowed*

for re-hearing The appellate decree was signed and

of appeal The District Judge who was the successor-in office of the Judge who decided the appeal, passed an
hat he had
predecessor
revision and
had come
der S. 12 of
the Court Fees Act.

Held, (1) that the appeal to the District Court was not properly valued, and that the appeal ought properly to

ad valorem court fee on the amount of the decree appealed from the order rejecting the application for stay was manifestly correct and was made with jurisdiction, and (3) that the High Court would not interfere in revision so as to set aside the order which was manifestly correct

Quaere—Whether if the full court fee had been paid

——**Sch. I, Art. 1 and Sch. II, Art. 17 (iii)**—*Declaration and consequential relief—Province of Court as to—Examination of plaint allegations when justified.*

The position with reference to court fees is that where as it is not permissible to a Court to insist on the plaintiff claiming a consequential relief when he has deliberately omitted to claim it and has confined himself to claiming a declaratory relief only and thus insist on the payment of *ad valorem* court-fee, it is equally clear that the question of court fee has got to be decided on the allegations contained in the plaint and not necessarily by looking at the relief only and the manner in which it has been clothed. Where the plaintiffs ask for a declaration that certain mortgage decrees are null and void and ineffectual, but whose allegations in the plaint in effect amount to asking for the cancellation of the mortgage bond on the basis of which the decree was obtained, *ad valorem* court fee has to be paid. (*Collister a* ... RAO. I ...

A.I.R. 1938 All. 481.

——**Sch. I, Art. 1**—Inapplicability—Appeal from order granting or refusing letters of administration—Court-fee payable. *See* COUR... ART. 11.

——**Sch. I, Art 1**—Order ... Court-fee *See* C P. CODE, ...

1938 Rang. L.R 635.

——**Sch. I, Art. 1**—Order under S. 144, C. P. Code —Appeal—Court-fee. *See* C. P. CODE, S. 144.

42 C.W N. 152

——**Sch. I, Art. 1**—*"Subject-matter"—Appeal—Demand for additional court fee—Fail with—Dismissal of appeal—Second appe... missal—Valuation—Subject matter—If of suit—Court-fee payable.*

... and the court fee ... second appeal. ... appellate Court ... Court held that t... the appellant h...

47 L.W. 356 = A I.R. 1938 Mad 498 = (1938) 1 M.L.J. 662.

——**Sch I, Arts 4 and 5**—*Applicability—Appeal—Dismissal for non-payment of printing charges—Application for restoration—Court fee—C. P. Code, O. 41, R. 19 and O 47, R 1.*

An application for restoration of an appeal dismissed for non-payment of printing costs should be treated as an application for review and not as an application under O. 41, R. 19 and should be required to be stamped under Arts. 4 and 5 of Sch. I, Court-Fees Act. (*James, J.*) S ...

——**Sch. I, Art. 11**—Applicability—Hindu joint family—Death of coparcener—Application by survivors for Letters of Administration in respect of undivided ... —Court-fee—Liability to pay. *See* ...-D. **17 Pat 542.**

... —Inapplicability—Appeal from ... ng letters of administration—Court-fee payable. *See* COURT-FEES ACT, SCH. II, ART. 11. **1938 Rang L R. 72.**

——**Sch II, Art. 1 (d)**—Applicability—Application ... for non-payment of ... ACT, SCH. I, ARTS. ...

19 Pat L.T. 17.

——**Sch. II, Art. 11**—*Appeal from order granting or refusing letters of administration—Court fee payable.*

The court fee payable on a memorandum of appeal presented to a High Court from an order refusing or granting letters of administration or probate of a will is Rs. 2 under Art. 11, Sch. II of the Court-Fees Act. ...

... Sch. II, ... under ... e, *See* ... R AND ...

... T. 864.

... *y—Mesne profits ... Executing Court ... for recovery—*

... is directed under ... e the amount of ... ascertains the amount and ... of such amount, the order ... C. P. Code, an appeal from ... Art. 11 of Sch. II of the ... n presented to the High Court ... y with a court fee stamp of ... J.) BALARAMCHARYA *v.* ... **176 I.C 251 = 11 R B 33 = ... 416 = A.I.R. 1938 Bom. 320.**

... —Applicability—U. P. Agricul... 23—Appeal under—Court fee ... RICULTURISTS' RELIEF ACT, ... W.R 932 = A.I.R. 1938 All 14.

... —Applicability—U. P. Encum... 14—Decree under—Appeal— ... FEES ACT, SCH. I, ART. 1. **(1937) A.L.J. 1373 = 1938 A.W.R. (H C.) 22 (F.B.).**

——Sch. II, Art. 17—

been dispossessed, nevertheless falls under Art. 17 of Sch. II to the Court Fees Act. The restoration of

A.I.R. 1938 Nag. 300

——Sch

bered Estat

fee. *See*

1938 O.W.N 1018 (1)=1938 O L R. 458=
1938 A W R (C C) 122 (1)=1938 O A 767

——Sch. II, Art 17 (iii)—Applicability—Suit by party to a decree to declare it illegal and void—Consequential relief, if implied *See* COURT-FEES ACT, S 7 (iv) (c) AND SCH II, ART. 17 (iii)

1937 O W.N. 1186=
A I R. 1938 Oudh 1 (F.B)

——Sch. II, Art 17 (vi)—*Applicability—Appeal*

reliefs claimed are incapable of
Art 17 (vi) of Sch II applies
the two reliefs, separate court
(*Stone, C. J., Grille and Bose,*
RAMCHANDRA. I L.R. (1938) Nag 423=
177 I C 274=11 R.N 133=1938 N L J. 269=
A I R. 1938 Nag 400 (F B)

40 P L R. 27.

——Sch. II, Art. 17 (6)—Applicability—Suit for

for appointment of plaintiff
dant—No prayer for possession.

of *Mutwalli*
o prays for the
possession at
, 17 (vi) of the
(*Gruer, J.*)

ASALATKHAN *v.* SAMSHERKHAN. 1938 N.L J. 357=
A.I.R. 1938 Nag. 537.

——Sch. II, Art. 17 (vi)—*Contract to execute deed trust in respect of joint properties belonging to plaint and defendant—Suit for specific performance—urt-fees.*

The plaintiff sued for specific performance of a contract to execute a deed of trust in favour of certain

——Sch II, Art 17 (vi)—Suit for partition of joint family property—Plaint alleging joint possession of parties—Court fee. *See* COURT FEES ACT, Ss 7 (iv) (b) AND ART 17 (vi) 40 P L R 2.

——Sch II, Art. 17 (vi) and S 7 (iv) (b) and (c) —*Suit for partition—Plea by defendant that part of property does not belong to joint estate—Court fee payable on plaint.*

The proper court-fee payable on a plaint in a suit for

fee is not
7 (iv) of
NYUN *v*
C 794=
10 R R 428=A I.R. 1938 Rang. 76

——Sch. II, Art 17 (vi) and S. 7 (v)—Suit for

executed on the joint family property is not for family

Appeal—Court fee payable.

CR. P. CODE (1898), S. 106,

ordinarily objectionable when the accused is convicted only of some petty offence, such as one under S. 3 (12) of the Town Nuisance Act, that he should also be

——S. 106—*Applicability—Offence involving breach of the peace—Offence under S 3 (12), Town Nuisance Act.*

An offence under

Act is an offence

purposes of S. 10(

BALIAN, *In re.* 19

A I R 1938 Mad. 795 = (1938) 2 M.L J. 152

——Ss 106 and 514—*Bond with sureties—Forfeiture—Extent of respective liabilities.*

In the Code of Criminal Procedure the expression always is 'a bond with sureties' and there is no reason why the liability of a surety under the CriminalProcedureCode should be differentiated from that of a surety under the

bond, be he principal or surety cannot be ordered to pay anything more. (*Hamilton, J*) ABDUS SATTAR *v.* EMPEROR. 1938 O A 566 = 1938 O W N 676 = 11 R.O. 7 = 1938 A Cr C 55 = 1938 O L R 355 = 176 I C 948 = 39 Cr L J 831 = A.I R. 1938 Oudh 195.

——S. 106—*Order under—Legality—Accused convicted of mischief.*

An order under S. 106, Cr. P. Code, cannot be legally passed in a case where the accused has been convicted of an offence under S. 426, I. P. Code, as the offence of mischief of which he is convicted does not involve a breach of the peace (*Zia ul-Hasan, J*) RAM ROOP *v.* EMPEROR. 1938 O W.N 1127 = 1938 A.W.R. (O C) 126 = 1938 O A 906 = 1938 O L R 509.

——S 106—*Order under — Legality—Conviction under Ss 147 and 323, I. P Code.*

S. 106, Cr. P. Code, as amended, no doubt, excludes

Code, are also convicted under Ss 147 and 323, I. P. Code, both of which involve a breach of the peace, an order under S. 106, Cr. P. Code, could properly be made owing to their conviction under Ss. 147 and 323. (*Zia ul-Hasan, J.*) MANNI LAL *v.* EMPEROR. 173 I C. 386 = 1938 O A. 158 =

39

——Ss. 107

possession by Civil Court under O. 39, R. 9, C.P. Code—Subsequent dispute as to possession—Proceedings by Criminal Court—If to be under S. 107 or S. 145—Duty

delivery of possession by the Civil Court and is between the parties to that delivery, the more appropriate step is

CR. P. CODE (1898), S. 107.

to bind down under S. 107 the party who has been dispossessed by the Civil Court. But if the delivery is an old one or the dispute is between a party who has been

dispossessed

Cr. P Code,

re a party is

under O. 39,

y is served on

the locality, it must be taken to be an effective dispossession of the zamindar, and the Criminal Courts must help the party put in possession in retaining that pos-

footing. But in such cases the magistrates must take it as an indisputable fact, once delivery of possession is proved, that on the day of the delivery the party who was put in possession was in possession as against a person who was a party to the delivery and was bound by the writ. They must start with the presumption that the state of things which existed on that day con-

——S. 107—*Object of.*

The object of the provisions contained in S. 107, Cr. P Code, is prevention and not punishment of offences, it is intended not to punish persons for anything that they have done in the past, but to prevent them from doing in future something which might occasion a breach of the peace. (*Guha and Lethbridge, JJ.*) SETH SUKHLAL KARNANI *v.* EMPEROR. 66 C.L J. 564.

——S. 107—*Petition under—Reference to police for preliminary enquiry—Power of Magistrate.*

There is nothing in the Cr. P. Code, which forbids a Magistrate before whom information has been lodged for taking proceedings under S. 107, to refer the matter to the police for preliminary enquiry. A.I.R. 1928 Lah. 694, overruled. (*Young, C.J. and Tek Chand, J.*) ISMAIL *v.* JAGAT SINGH. 40 P L R 579 = A I.R 1938 Lah. 861.

——S. 107—Proceedings under—Forum. *See* CR. CODE, SS. 12 AND 107. 176 I C. 781 = A I.R. 1938 Nag. 448.

——S. 107—*Proceeding under—When may be taken.*

Before taking action under S. 107, the Magistrate has to satisfy himself that a person is likely to commit a breach of the peace or disturb the public tranquillity. The object of the provisions contained in S. 107 is prevention and not punishment of offences; it is intended not to punish persons for anything that they have done in the past, but to prevent them from doing in future

reach of the peace.

ILAL KARNANI *v.*

= 39 Cr.L.J 992 =

A.I R. 1938 Cal. 583.

——S. 107—*Proceeding under—When may be started.*

The law provides for a proceeding under S. 107, Cr.

in the

for a

that

ce or

S. 107

JJ.)

SETH SUKHLAL KARNANI *v.* EMPEROR. 66 C.L J. 564.

CR. P. CODE (1898), S 109.

An order under S. 109, Cr P. Code, cannot be passed against a person on the ground that it is not safe in the interests of justice to allow him unrestricted personal liberty. Such a ground is not one contemplated by the section (*Bartley and Edgley, JJ.*) KALI PADA DAS *v.* EMPEROR 42 C W N. 816

——S. 109—*Scope and applicability—Concealment, if possible when local residence is known—Section if contemplates continuity in concealment.*

S 109, Cr. P. Code is one restrictive of liberty and

precautions There can be a concealment even if residence within the local limits is well known and no hard and fast rule could be laid down as regards the continuity of the concealment for it is a question of fact in each case. (*Gruer, J.*) GANPATI *v.* EMPEROR 39 Cr L J 747=11 R N. 708= 176 I C. 820=A I R 1938 Nag 465.

——S. 109 (a)—*'Concealing'—If refers to isolated act.*

Per *Jack, J.*—The word 'concealing' in S Code, refers to continuous concealment isolated act of concealment (*Jack and P* SUPERINTENDENT AND REMEMBRANCE AFFAIRS, BENGAL *v* ISABALI I L R (1938) 2 Cal 221=42 C W N 588= 175 I C 722=39

——S 109 (a)—*'Concealin*

A person was walking alon the watchman on the alert, until his attention should be c on his way. He did not hide there apparently in the hope for an inanimate object or watchman happened to turn h

different that they ca within Cl (*b*) itself th the alternative, and wording of Cl (*b*) is necessity be read discreetley and a person who cannot give a satisfactory account of himself is not necessarily a

CR P. CODE (1898), S. 110.

herwise from ered to have being found his posses- that he is a rable profes- said to have en on being use breaking y a devious o the police, (*Grille, J.*) 1 R.N. 54= 39 Cr L J. 745=A I R. 1938 Nag 303.

——S. 109 (b)—*'Satisfactory account'—Interpretation.*

The express'on "has failed to give a satisfactory account of himself" in S. 109 (b), Cr. P. Code means a satisfactory account of his presence at the place and in the circumstances in which he was found, and not merely a satisfactory account of himself generally. Where a person is arrested in extremely suspicious cir-

SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* ISABALI I L R (1938) 2 Cal 221=42 C.W N 588= 175 I C 722=39 Cr L J 647=11 R C 1= A I R. 1938 Cal 409.

——S. 110—*Initiation of proceedings under—Vague and general allegations by tenants of oppression by zamindar spread over several years—If ground for*

A.I R 1938 Pat 533.

——S 110—*Proceedings under—Previous conviction—If necessary—Habitual offender—Proof of.*

A previous conviction is not necessary for proceedings under S 110, Cr P Code There is no such provision hand lays down in man is an habitual of general repute or EROR *v.* KHUDA 22=175 I C 522= 10 R L 732=39 Cr L J 599= A.I R 1938 Lah.

——S. 110—*Scope of—Application if limited to strangers to a locality—Proof of previous convictions, if necessary.*

There is nothing in the wording of S. 110 or of any other section of the Cr. P Code, that leads to the inference that S. 110 can only be used where the parties are strangers to the locality in which the offences are committed. If the persons, or the acts which they commit, are such as to make it difficult to deal with them under the ordinary provisions of law then S. 110 can be used Proof of a certain number of prior convictions is not a prerequisite to a person being bound over under this or similar sections (*Horwill, J.*) SHANMUGAM ASARI *v.* EMPEROR. 47 L W. 196=
175 I C. 417=10 R.M 777=39 Cr.L J. 588=
A I R 1938 Mad 482=1938 M W.N. 93=
(1938) 1 M L J. 178.

——S. 110 (e) and (f)—*Applicability—Leaders of local factions.*

...

rival factions arming themselves and their supporters and settling disputes by force—If can be bound over.

Clauses (*e*) and (*f*) of S. 110, Cr. P. Code, are not inapplicable to leaders of rival factions who use to arm themselves and their supporters and attempt to settle their disputes by force with the result that breaches of the peace often result and are still more frequently threatened. Such persons can be bound over under S. 110 (*e*) and (*f*) A man is not any the less dangerous to the community because he lives in a house and owns lands (*Horwill, J.*) MANA *v.* EMPEROR.
1938 M.W.N 213=175 I C. 491=10 R.M. 783=
39 Cr L J. 595=A I.R. 1938 Mad 448

——S. 110 (e) and (f)—*Applicability—Offences involving breach of the peace—Persons in the habit of waylaying women working fields and attempting to rape them—Order binding them over—If justified.*

Before a person can be bound over under S. 110 (*e*), Cr. P. Code, he must be found to have committed offences of which a breach of the peace is a necessary constituent. An assault is clearly an offence involving a breach of the peace and clearly an attempt to rape does involve an assault upon the person against whom this offence is committed. Persons who habitually attempt to rape women and are in the habit of waylaying women working in fields, and attempting to rape them are habitually committing offences involving a breach of the peace and are desperate characters whom it is dangerous to leave at large. An order binding them over under S. 110 (*e*) and (*f*) ... *will, J.*) VEERA ...
1938 M.W.N. 6 ...

——S 112—*Order under—Contents—Non-mention of*

ency for action being taken—Police evidence—Admissibility.

In view of proviso 4 to S. 117 of the Cr P. Code, a finding in regard to a charge under S. 110 (*f*) of the Code can be based on evidence of general repute of the person proceeded against. The section does not say in what manner evidence is to be given. The evidence of police witnesses with regard to the general repute of the person proceeded against is not inadmissible. The question as to what is a man's reputation is a question of fact and may be spoken to by any one who knows ...

——S. 120—*Commencement of period of security—Stay of order to furnish security pending appeal—Dismissal of appeal.*

Where the operation of an order to furnish security is ... herefrom, and ... date of com- ... y is required, ... possibly after ... of the Magis ... (*Hamilton,* ... 8 O A. 566= ... A Cr C. 54=
1938 O.L R. 355=176 I.C. 948=39 Cr L J. 831=
A.I R. 1938 Oudh 195.

——S. 132—*Scope—Police officers acting under Ch. IX—Bar to prosecution of.*

S. 132, Cr. P. Code, is a bar to the prosecution of police-officers purporting to act under Ch. IX of the Code without the sanction of the Local Government. It is not necessary that the accused (*i.e.,* police officers) should prove the existence of an unlawful assembly. (*King, J.*) ELAYA PILLAI *v.* ARULANANDAN PILLAI.
1937 M W.N. 1243.

——Ss. 133 and 139-A—*Absence of conditional order—Failure to make enquiry under S. 139 A—Final order—Legality.*

Where a Magistrate without making a conditional order under S. 133, Cr. P. Code, issued a notice calling upon the opponents to show cause why action under S. 133 should not be taken, and where the opponents appeared and denied the allegations and the Magistrate even then did not issue a conditional order, nor did he make an enquiry under S. 139-A but recorded evidence and passed what purported to be a final order restraining the opponents from committing the acts complained of it was held that the Magistrate had disregarded completely the procedure laid down by the Code and that it was impossible to justify the order. (*Weston.*) CHHITAR MAL *v* SULEMAN. 1938 A.M.L J. 4.

——S. 133—*Applicability—Long standing obstruction.*

...

public interest The fact that an obstruction has been ...

CR. P. CODE (1898), S. 133.

——S. 133—*Discretion of Magistrate—Right of private person to insist on order under section—Refusal by Magistrate—Remedy.*

Whether or not an order should be passed under S. 133, Cr. P. Code, is a matter of discretion for the Magistrate and no private person has a right to insist that a Magistrate shall pass such an order. If the Magistrate does not choose to pass an order under the section, the remedy of the aggrieved party is normally in the Civil Court. (*Allsop, J.*) ALI AHMAD *v.* EMPEROR. 1937 A W R 866=1937 A Cr C 165

——Ss 133, 137 and 139 A—*Issue of conditional order under S. 133—Procedure to be followed thereafter*

the right to proceed to enquire into the matter. The

1938 A Cr.C. 105=1938 A L J. 1013= A I R 1938 All 653

——S 133—*Magistrate ordering party ... obstruction or appear before him—Party app... fore him—Power of Magistrate to send case ... Magistrate for disposal.*

Where a Magistrate orders under S. 133 ... causing obstruction or nuisance either to remove the

——S. 133—*Order under—If an injunction.*

A conditional order under S. 133 does not amount to injunction. (*Stone, C.J. and Vivian Bose, J.*) HARGOVIND DULLABH JIWAN *v.* KIKABHAI RAHIMTULLAH. I L R 1938 Nag 348=176 I C. 257= 11 R N 45=A I R 1938 Nag 84

——S 133—Power to direct removal of obstruction in public pathway *See* CR. P CODE, SS 147 (2) AND 133. 1938 N L J 139

——S 139 A—*Filing of written statement—Failure to question opponent—Effect.*

When a written reply has been filed by the opponent, the mere omission of the Magistrate to question him as required by S. 139-A, Cr. P. Code, on points to which he had already replied, is not the omission of an essential formality justifying interference on a reference. (*Weston*) HANUMAN DAS *v* DISTRICT BOARD ENGINEER AJMER 1938 A M L J 2

——S 139-A—*Object and scope of—Right of p... vate party to ask for enquiry into rights of parties.*

The provisions in S 139 A, as to the holding of enquiry are intended to protect the rights of a pers... against whom it is proposed to pass an order und...

——S. 139 A—*Scope of enquiry under.*

The law does not contemplate the decision by a Magistrate, making a summary enquiry under Chap X,

CR. P. CODE (1898) S. 144.

Cr. P. Code, of any question of title upon weighing evidence produced on both sides. All that he is required to do under S. 139 A, Cr. P. Code, is to hold an enquiry merely to satisfy himself that there is or is not some *prima facie* evidence to support the evidence of the denial of the public right (*Mulla, J.*) MT. CHUNNI *v.* EMPEROR. 1938 A.W R (H C) 640= 1938 A Cr C. 105=1938 A.L J. 1013= A I.R. 1938 All 653.

——S 139 A (2)—*Existence of public right—Denial proved—Duty of Magistrate—Magistrate, if can direct a party to file a civil suit.*

According to S 139 A (2), Cr. P Code, if a magistrate on enquiry finds that there is any reliable evidence in

suit. (*Gruer, J.*) BIHARI, *In re.* 176 I C. 755= 39 Cr.L J. 791 (1)=11 R N. 77= A I R 1938 Nag 512.

——144 -*Applicability—Dispute relating to land ... procedure—Proceedings under S. 144—If justified.*

Where the dispute obviously relates to immoveable

KUMAR GHOSH 19 P L T. 620= A I R 1938 Pat. 610.

-Value of as to possession. ... P Code, does not establish ... *ad Noor and Varma, JJ.*) EMPEROR ... 715=1938 P.W N 542= ... P. 100=39 Cr L J 778= A I R 1938 Pat. 369

——S. 144 (4)—*Power of superior Magistrate under—Order made against party called upon to show cause—If can be altered into one against other party not so called upon—Revision — Interference—Order spending itself out—If bar to revision*

Cl 4 of S 144, Cr P. Code, contemplates only a change in the nature of the order made and not a change in the party against whom it is made The order can be absolved only against the party who is called upon to show It is no doubt open to a superior Magistrate under S 144 (4) to rescind an order made by a Subordinate Magistrate against a party who was called upon to show cause, but it is not open to him to alter the order into one against the other party who was never called upon to show cause. Such an order is manifestly prejudicial to such party who has never been called upon to show and is liable to be set aside in

the Magistrate on the question of possession are simply incidental observations in order to enable the order to made. No inference can be drawn from the order

CR. P. CODE (1898), S. 144.

possession of any particular party, having regard to the peculiar jurisdiction conferred by the section, though the fact of the order may be admissible in evidence under S. 13 of the Evidence Act. (*Dhavle, J.*) JAINUDDIN AHMAD SHEIKH v. KARI KANT DOSS.
1938 P.W.N. 390

——**S. 144**—*Scope—Mandatory order—Power of magistrate to pass—Order directing party to remove fence from land—If authorized.*

Where a party has already taken possession of a disputed plot of land and put up boundary pillars and fence round it, a criminal Court cannot start proceedings under S. 144, Cr. P. Code, with a view to dispossess him from the disputed land. No doubt S. 144, Cr. P. Code gives a magistrate the power to pass an order to prevent an immediate breach of peace, but the section does not authorise him to pass a mandatory order to remove the fence. All that a magistrate can do under the section is to direct any person to abstain from a certain act or to take certain order without certain property in his possession or under his management. The section, in other words empowers the magistrate to pass a restrictive order, and the removal of the fence is not act which the magistrate of the section to direct a party to do (*Chatterji, J.*) BIMALA KANTA BAGCHI v. SANAT KUMAR GHOSH. **19 P L T 620=A I.R 1938 Pat. 610.**

——**S. 144**—*Scope—Procession taken by Adi-Dravidas along streets occupied by caste Hindus—When to be restrained*

There can be no doubt that Adi-Dravidas have a civil right to take a procession along all public streets, just as any other persons may have, and caste Hindus have no right to object at all. Ordinarily, those responsible for law and order should see that the exercise of such rights is supported by the police and the Magistracy except in cases where in the interests of peace persons have to be prevented from e
the Adi-Dravidas conduct t
irritate and annoy the caste r
Magistrate may properly pla
procession. (*Horwill, J.*)
v. PONNUSWAMI IYER.
1938 M W N 606=177 I C 436=39 Cr L J. 886=11 R.M. 326=A.I R 1938 Mad 714=(1938) 2 M.L J. 160.

——**S. 144**—*Value to be attached to orders passed in proceedings under.*

Orders passed in proceedings under S. 144, Cr. P. Code, cannot, of course be taken as decisive of the rights of either of the parties, but the nature of the proceeding and its conclusions may be referred to when the history of the property is in question. (*Dhavle,*

——**S**

under—Joint Magistrate not only rescinding that order but making new orders—Jurisdiction of.

While it is open to a superior Magistrate to alter or rescind the order of an inferior Magistrate, he cannot

CR. P CODE (1898), S. 145.

hibiting some of them from entering a temple without a written consent from the trustee,

Held, that the above orders of the joint Magistrate were without jurisdiction and hence declared to be null and void. 42 M.L.J 352=1937 M. 487, Foll. (*Pandrang, Row, J.*) RAMASWAMI AIYANGAR v RAMASWAMI PATRACHAR. **1938 M.W.N 974=(1938) 2 M L J. 509.**

——**S 145**—Applicability—Possession delivered by Civil Court under O. 39, R. 9, C. P. Code—Subsequent dispute—Proceedings under S. 145—Discretion—Duty of Criminal Court to recognise delivery by Civil Court. *See* CR. P. CODE, SS. 107 AND 145. **1938 P.W.N 526.**

——**S 145**—*Breach of peace—Apprehension of—Duty of Magistrate to record finding.*

If a magistrate in his preliminary order had specifically found that the dispute was likely to cause a breach of the peace, it is not necessary for him to repeat in the essential final order that such an apprehension exists The requisite to give the magistrate jurisdiction under S 145, Cr. P. Code, is that he should be satisfied that a dispute exists regarding land or water before he makes the preliminary order. Once he is so satisfied, his subsequent action relates to procedure and not jurisdiction and in this aspect not liable to be upset on revision by the High Court. (*Ram Lall, J*) GURDITTA v. TAJA.
I L R. 1938 Lah. 611.

——**S 145**—*Breach of peace—Finding of magistrate—Interference by High Court.*

The High Court will not interfere lightly with the finding of a Magistrate as to an apprehension of a breach of the peace when it is based on evidence and the duty of weighing evidence is one purely for the trial Court (*Ram Lall, J.*) GURDITTA v. TAJA
I.L R 1938 Lah 611.

——**S. 145**—*Costs—Award of, long after disposal of*

Row, J) NARIAH v KRISHNAMURTHI.
1938 M.W.N. 1011=48 L W. 444 (1)

——**S 145**—*Jurisdiction—Delivery of possession by Civil Court—Proceedings under section—Jurisdiction to start.*

It cannot be laid down as a hard and fast rule that a Magistrate has no jurisdiction to start a case under S 145, Cr. P. Code, once there has been a delivery of possession by the Civil Court. (*Noor, J*) RAJENDRA NARAYAN BHANJ DEO v. CHINTAMANI MAHAPATRA.
1938 P.W.N. 526=19 Pat L T 632.

——**S. 145**—*Order under—Revision by High Court—Interference.*

The High Court does not interfere in revision with orders under S. 145, Cr. P. Code, on the merits as a rule (*Dhavle, J.*) BABU RAM PANDEY v SHYAM DEO NARAIN. **1938 P.W.N. 810.**

——**S 145**—*Procedure—Claim by landlord and by*

Legality—Dismissal under S. 203—If proper.

The only case in which a Magistrate can refuse to take action under S. 145, Cr P. Code, is when he is not satisfied that there is a danger of a breach of p
where the police report is to the contrary a
satisfied with it, his duty is to issue notices
ties and proceed according to sub-S. (4).
Magistrate considers the evidence given in a

order cannot be sustained. The parties must be given an opportunity to file statements and the inquiry then proceeded with. (*Lakshmana Rao, J.*) PEDDA GIDDASANI *v.* ACHIGADU. 1938 M W.N. 824 = 178 I C. 251

——S. 145—*Scope—Dispute between parties claiming joint possession—Jurisdiction of Magistrate to deal with.*

A dispute between two parties claiming to hold joint possession of the property in dispute is not outside the scope of S. 145, Cr. P Code, and a magistrate has consequently jurisdiction to deal with the matter under the section (*Madan* ...) ... *v.* AMIRUL HASAN.

——S 145—*Succ*
Jurisdiction of Magis

——S 145 (1)—"*Actual*
includes constructive possessio

The words "actual possession" in S. 145, Cr. P. Code, can only mean possession in fact as distinguished

Where there are actually no grounds whatever of the Magistrate's being so satisfied in view of the facts, and there is a failure on his part to comply with the provi-

——S 145 (2) — "*Immovable property*" — *Paddy crops cut and stored in khalihan—Dispute as to possession of—Proceedings under S. 145—Jurisdiction to draw up.*

Paddy crops cut and stored in a khalihan do not come within the term "immovable property" within the meaning of S. 145 (2), and a dispute as to possession of such crops does not give a Magistrate jurisdiction to draw up proceedings under S. 145, Cr. P. Code (*Chatterji, J*) RAJINDRA LAL *v.* BRICH KURMI. 1938 P.W.N. 643 = 19 Pat L T. 728 = A.I.R. 1938 Pat 527.

management of the property. Another reason for which a "receiver" endowed with powers under the Civil

Procedure Code, should not be appointed is that the proceedings under S. 145 are intended to be carried through without delay and the time during which the subject of the dispute needs to be under attachment is so short as certainly not to justify the appointment of a receiver having the powers of a receiver under the Civil Procedure Code. (*Mackney, J.*) MAUNG SAN v. MAUNG LU GALE. 174 I.C. 951
39 Cr.L J. 484 = 10 B R 45
A I R. 1938 Rang.

——S. 145 (4)—*Jurisdiction—Order in favour of person not party to proceedings—Legality.*

An order in favour of a person who is not a party to the proceedings is not warranted and is without jurisdiction. (*Dhavle, J.*) BABU RAM PANDEY v SHYAM DEO NARAIN. 1938 P W.N 810

——S. 145 (4)—*Summoning of witnesses—Duty of Magistrate.*

The duty of the Magistrate acting under S. 145 is to decide whether there is likely to be a breach of peace

mean anything more than that the receive evidence actually put before hir but does not require him to summon instance of the parties who are unab

his duty to summon them I of him that he should summ not he thinks he needs them.

clear that the procedure prescribed mandatory and that if a Magistrate sub-S. (4) and decides the question parties was in possession at the date under sub-S. (1) it is not necess whether or not any of the parties ha

——S. 145 (4), second proviso—
receiver—Power of Court

Per *Biswas, J.*—Strictly speaking, which is arguable whether or not a 'receiver' can be appointed in any proceeding under Chapter XII except under S. 146, Cr. P Code. Even though a receiver may not be appointed consequent on an attachment made
rate is com-
custody of
(*Biswas, JJ*)
42 C.W.N 351.

——S. 145 (4), second proviso—*Order for attachment pending decision of another Court—Legality.*

An order for attachment under S. 145 (4), second proviso, Cr.P. Code, can be operative only until the decision of the Magistrate himself under that section. An order
be operative until
pending in other
of the proviso.
IZUR RAHMAN v.
42 C.W N. 351.

——S. 145 (4), second proviso—*Order of attachment—When may be made.*

It is only after drawing up a proceeding in terms of sub S (1) of S. 145, Cr. P. Code, that the Magistrate acquires jurisdiction, to make an order of attachment under the last proviso to sub S. (4). (*Mukherjea and Biswas, JJ.*) FAIZUR RAHMAN v. SHEIKH FADLEY.
42 C.W.N. 351.

——S 145 (6)—*Effect of order under—Who are bound—Order against a party—Subsequent application*

ch they were bound by the by them is not maintain-
MUNESHWAR BAKSH

1938 O A 635 = 1938 O W N 828 =
1938 O L R 401 = 1938 A Cr C 83 =
11 R O. 40 = 39 Cr.L J. 868.

—*Proceeding under S 147—Road in ... party—Order in*

road, proceedings ... ourt finds that the

without a discussion and failure to give reasons for being unable to come to a definite conclusion make the order of attachment bad. (*Zia ul Hasan, J*) MUNIR AHMAD v. MAHMUD UL HAQ 1938 O W N. 673 =
1938 A Cr C 63 = 1938 O.A 942 =
1938 A.W.R. (C C.) 134.

—— S. 147—*Applicability—Dispute about right to worship as pujari in temple—Order in respect of—Jurisdiction of Magistrate.*

CR. P. CODE (1898), S. 147.

A dispute about the right to worship as pujari in a temple is a dispute which comes within the provisions of S. 147, Cr. P. Code, as it is a dispute regarding an alleged right of user of an ... land or water ... S. 145

S. 147 The dispute in actual fact may have more to do with what a man does in the temple after entering into it and not so much with his actual entry into the temple; but since the right is inseparably connected

47 L W 305 = 176 I C 127 = (1938) 1 M W N. 348 = 11 R.M 32 = 39 Cr.L J. 705 = A I R 1938 Mad. 537 = (1938) 1 M L J. 817.

——Ss 147 (2), and 133—*Mandatory order—If can be passed under S 147 (2)—Removal of obstruction—Procedure.*

Under S 147 (2), Cr. P Code, a ... power to make an order in the natur... injunction for the removal of an obs... way lawfully used by the public, ... under S 133 to bring about its rem... SYED USMAN ALI *v.* EMPEROR

I L R 1938 Nag. 580 = 1938 N.L J. 139 = 175 I C. 231 = 10 R N. 440 = 39 Cr L J 584 = A.I.R 1938 Nag 297.

——S 154—*First information report—Entry in*

... proceedings of the police and therefore inadmissible as evidence for any purpose in Court. (*Tekchand and Ram Lal, JJ*) AHMAN *v.* EMPEROR.

40 P L R 697 = A I R. 1938 Lah. 787.

——S 154—*First information report — What amounts to—Evidentiary value of such report*

S 154, Cr. P Code, does not necessarily contemplate that only one information of the crime should be recorded as first information report but all information given to police before investigation is started may amount to first information report within the meaning of that section ... evidence b... or contrad... accused is... his name ... cence (A... EMPEROR

——S 162—*Admissibility—Statement of witnesses during investigation who were made to sign them*

Where during ... were made to s... before the officer ... *ul-Hasan, J.*)

1938 A ...

CR. P. CODE (1898), S. 162

——S. 162—*Applicability—Oral statements by accused to C. I. D. Officer—Admissibility—Evidence Act, S. 25.*

Statements made to a C. I. D. ... who is investi... ved information ... of investigation, ... to such statements. The fact that the statements are oral makes no difference, because oral statements no less than written statements come within the purview of S. 162, Cr. P. Code. When such statements made by the ... ing guilt on ... ow that the ... an offence, ... officer and ... *ng Row, J*)

APPAYYA *v.* GOPALAKRISHNAYYA

1938 M W.N. 825 = 48 L W. 322 = A I R 1938 Mad. 893.

——S. 162—*Applicability — "Statement made in course of investigation"—Meaning of.*

The question whether a statement was recorded during investigation or not is a question of fact. Where a ... of a shooting inci... shooting has taken ... was due to accident ... se at the house takes ... esent there, it cannot be said that the statement is recorded by him in the course of the investigation, so as to make it inadmissible in evidence. It is only after recording that statement that the Sub Inspector can have any real information about the commission of a cognizable offence. (*Burn and King, JJ*) MYLASWAMI CHETTY *v.* EMPEROR

... (*Bennet, J.*)

W.K. WESLEY *v.* EMPEROR.

1938 A.W R (H C) 505 = 1938 A Cr C. 90 = 1938 A L R. 827 = 178 I C 183 = A I R 1938 All 571.

——S 162—*Construction and scope—"Any person" —Previous statement by accused—Admissibility and use of—Rule as to—Admissions and previous statements of witness—Distinction—Previous statement of accused amounting to confession—Admissibility.*

S 162, Cr. P. Code has no reference whatever to ... merely codi... as to the use ... s which may ... ns by a party ... differ funda... by a witness. ... of the relevant fact ... by a witness is not ... the witness, but is ... to corroborate the oral testimony of the witness or it may be put to him in cross examination for the ...

Procedure Code, should not be appointed is that the proceedings under S 145 are intended to be carried through without delay and the time during which the

39 Cr.L J. 484=10 B R 451= A.I.R. 1938 Rang. 88

——**S. 145 (4)**—*Jurisdiction—Order in favour of person not party to proceedings—Legality.*

An order in favour of a persor the proceedings is not warranted tion. (*Dhavle, J.*) BABU RAB DEO NARAIN. P W.N. 510

——**S. 145 (4)**—*Summoning of witnesses—Duty of Magistrate.*

The duty of the Magistrate acting under S. 145 is to

and not with the parties to decide what evidence is necessary to be called In S. 1 provision as is to be found in Code. The amendment to Cl. mean anything more than that receive evidence actually put befo but does not require him to sum instance of the parties who are unable to bring their witnesses to Court It is the duty of the Magistrate to obtain such evidence as is requisite to enable him to form a reasonable opinion on the matter before him; it may be that this will entail his summoning the witnesses mentioned by the parties and if so, then it is certainly his duty to summon them It does not however require of him that he should summon the witnesses whether or not he thinks he needs them (*Mackney, J.*) A. MEAH *v.* STEEL BROTHERS & CO., LTD.

176 I C. 266=11 R R. 40=39 Cr L J. 708= A I R. 1938 Rang. 229.

——**S. 145 (4) and Proviso.**—*Relative scope of—*

clear that the procedure prescribed mandatory and that if a Magistrate sub-S. (4) and decides the question parties was in possession at the date under sub-S. (1) it is not necessa whether or not any of the parties has been dispossessed within two months next before the date of the order (*Zia-ul-Hasan and* DWARKA SINGH 1938

——**S 145 (4)** *receiver—Power of*

Per *Biswas, J.* which is arguable appointed in any pr under S. 146, Cr. P

42 C.W.N 351.

——**S. 145 (4), second proviso**—*Order for attachment pending decision of another Court—Legality.*

An order for attachment under S. 145 (4), second pro-

(*Mukherjea and Biswas, JJ*) FAIZUR RAHMAN *v.* SHEIKH LADLEY. 42 C.W.N. 351.

——**S. 145 (4), second proviso**—*Order of attachment—When may be made.*

It is only after drawing up a proceeding in terms of Code, that the Magistrate an order of attachment (4). (*Mukherjea and Biswas, JJ.*) FAIZUR RAHMAN *v.* SHEIKH LADLEY. 42 C.W N 351.

——**S 145 (6)**—*Effect of order under—Who are bound—Order against a party—Subsequent application*

S, Cr. P. Code, *ex parte* order nder S. 145 (6) and subsequently mutation was made in the name of the applied under S. 145, applicant, it was held to the prior proceedey were bound by the them is not maintain- UNESHWAR BAKSH SINGH *v.* GAJJA SINGH.

1938 O A. 635=1938 O W N. 828= 177 I C. 247=1938 O L R 401=1938 A Cr C 83= 11 R O. 40=39 Cr L J. 868.

——**S. 145 (6)**—*Proceeding under S 147—Road in dispute found to be private road of one party—Order in form under S. 145 (6)—If justified.*

Where in a dispute regarding a road, proceedings under S. 147 are started and the Court finds that the disputed portion of the road is the private road of one party, the appropriate order to be passed is a declaration that the road was not a public road and the prohibition directed against the opposite party Where instead of

DHANSAR COAL. =4 B R 329= 19 P L T 323= 1938 Pat 133.

——**S 146**—*Attachment under—Valid grounds for—Inability to come to a finding*

147—*Applicability—Dispute about right to is pujari in temple—Order in respect of—Jurisdiction of Magistrate.*

CR. P. CODE (1898), S. 147.

A dispute about the right to worship as pujari in a temple is a dispute which comes within the provisions of S 147, Cr. P. Code, as it is a dispute regarding an alleged right of user of any land as explained in S 145 (2). Where the dispute is regarding a right which is inseparably connected with the use of any land or building it must be regarded as being within the purview of S. 147 The dispute in actual fact may have more to do with what a man does in the temple after entering into it and not so much with his actual entry into the temple; but since the right is inseparably connected

——Ss 147 (2), and 133—*Mandatory order—If can be passed under S. 147 (2)—Removal of obstruction—Procedure.*

Under S 147 (2), Cr. P. Code, a power to make an order in the nature injunction for the removal of an obs way lawfully used by the public, under S 133 to bring about its remo

SYED USMAN ALI *v* EMPEROR

I L R 1938 Nag 580 = 1938 N L J 139 = 175 I C 231 = 10 R N 410 = 39 Cr L J 584 = A.I R. 1938 Nag 297

——S 154—*First information report—Entry in diary mentioning names of culprits given by P W.*

Where when the Sub Inspector left the thana before

amounts to—Evidentiary value of such report.

S 154, Cr. P. Code, does not necessarily contemplate that only one information of the crime should be recorded as first information report but all information given to police before investigation is started may amount to first information report within the meaning of that section.

——S 161—Statement made in answer to requisition by investigating officer under—If privileged *See* PENAL CODE S 499, EXC 9, 47 L W. 136

——S 162—*Admissibility—Statement of witnesses during investigation who were made to sign them.*

Where during the investigation, certain were made to sign the statements which th before the officer, their evidence is inadmissibl *ul-Hasan J*)

CR. P. CODE (1898), S. 162

——S 162—*Applicability—Oral statements by accused to C. I. D. Officer—Admissibility—Evidence Act, S. 25.*

Statements made to a C. I. D. officer who is investigating an offence of which he has received information are statements made during the course of investigation, and S 162, Cr. P. Code would apply to such statements. The fact that the statements are oral makes no difference, because oral statements no less than written statements come within the purview of S. 162, Cr. P. Code. When such statements made by the ... ing guilt on ... ow that the ... an offence, ... officer and ... *ng Row, J*)

L W. 322 = 8 Mad. 893.

... *nt made in course of investigation"—Meaning of.*

The question whether a statement was recorded during investigation or not is a question of fact Where a ... of a shooting incident ... shooting has taken ... was due to accident ... se at the house takes ... esent there, it cannot be said that the statement is recorded by him in the course of the investigation, so as to make it inadmissible in evidence. It is only after recording that statement that the Sub-Inspector can have any real information about the commission of a cognizable offence (*Burn and King, JJ*) MYLASWAMI CHETTY *v*. EMPEROR, 1938 M W N. 905 = (1938) 2 M L J. 750.

——S 162—*Contradiction—Conditions necessary.*

... the other is that the statement of the police should be proved by a certified copy of the diary (*Bennet, J.*) W.K. WESLEY *v* EMPEROR,

1938 A.W R (H C) 505 = 1938 A Cr C. 90 = 1938 A L R. 827 = 178 I C 183 = A I R 1938 All 571.

——S 162—*Construction and scope—"Any person"—Previous statement by accused—Admissibility and use of—Rule as to—Admissions and previous statements of witness—Distinction—Previous statement of accused amounting to confession—Admissibility*

S. 162, Cr. P. Code has no reference whatever to accused persons or to their statements, but merely codi... the law as to the use ... statements which may ... Admissions by a party ... criminal, differ fundam... ents made by a witness. ... ce of the relevant fact admitted. A previous statement by a witness is not direct evidence of the fact stated by the witness, but is material which may be used either to corroborate the oral testimony of the witness or it may be put to him in cross examination for the purpose of destroying his credit ...

... material allegation of fact must be the evi... witness as given in Court. This fundamen... cannot be ignored or lost sight of. It

by a party

ing evidence to show that the true

the admission. It will then be for the Court to weigh the evidence afforded by the admission against the evidence produced at the trial by the defence. An accused against whom a previous statement by him is tendered in evidence is entitled to have the whole statement placed before the Court If that statement, taken as a whole amounts to a confession the whole statement must be excluded. It is not permissible to place a part of a single statement as a mere admission or series of admissions and to omit merely the confessional part of it. If the statement tendered in evidence does not contain any admission of the offence charged nor indeed an offence of any kind, and there is no indication whatever that it is part of a larger statement making any admission of guilt, it is admissible in evidence against the accused of the truth of the facts stated therein.

Manohar Lal, J S 162 Cr. P. Code, is necessary corollary to Ss 160 and 161, and must be read along with those two sections. It was never the intention of

code dealing with the arrest of the accused or issuing summons or warrant to the accused The question of admissibility of the statement of the accused is governed by the general provisions of the Evidence Act. (*Court-*

the witness in fact had stated.
be borne in mind and the Court
the matter is cleared up in re-
duty of the Public Prosecutor t
answer of the investigating o
statement of a witness does not create a wrong impression of what the witness stated before the police. He must in these cases bring about other statements to explain the matter referred to in c
the Public Prosecutor fails to do
Court in fairness to the case ar
bring about facts which will cl

by police.

Where the police after investigation into a complaint did not take any action and thereafter the complainant preferred a complaint to a Magistrate which was almost identical with the one made to the police and the Magistrate framed charges on lesser offences which

were however included in the more serious offences in-

the Court as a result of the police investigation, it was *held* that there was nothing in S. 162 restricting it to cases sent up by the police and the defence was entitled to such copies and that there was no reason to deprive the defence of the privilege, because it had happened that charges of non-cognizable offences had been framed. (*Weston*) MANGLA *v.* JASSI

1938 A. M.L J. 108.

——S. 162—*Statement to police—Admissibility—Person making statement dead at time of trial.*

A statement made to the police is not admissible in evidence, although the person who made the statement is dead at the time of the trial. (*Ram Lall, J.*) SUNDAR LAL *v* EMPEROR. 40 P L R. 421.

——S 162—*Statement of witness in Court that he identified accused before Police Officer—Admissibility.*

A statement made by a witness in Court that he identified the accused before the Sub Inspector of Police, is not inadmissible under S. 162, C. P. Code. According

ere it is not a
but the fact
Police Officer.

(*M. C. Ghose and Bartley, JJ.*) LELA LALUNG *v.* EMPEROR. 42 C W.N. 620 = 68 C L J. 103.

——S 162—*Statement of witnesses recorded in police diary—Burden of rebuttal.*

ccuracy in the
statements of
the burden of
the witness is
sinterested and
and what he is
uld easily have

that which results
s are sought to be
PEROR.
6 = 39 Cr.L J. 68 =
.R. 1938 Nag 110.

——S*162 (1). Proviso—*Construction—Proof of statements formally—If condition precedent to use of statements.*

the statement by calling the
rded the statement. (*Grille, J.*)
R 20 N L J. 280 =
= 39 Cr.L J. 68 = 10 R N. 169 =
A I R. 1938 Nag. 110.

——S 164—*Confession—Oral proof by Magistrate—Admissibility.*

Oral proof by a Magistrate of a confession which he could have recorded is inadmissible, for when the Legislature has prescribed a particular mode of proof, no

CR. P. CODE (1898), S. 164.

other method will suffice. A.I.R. 1936 P.C. 253, F... (*Young, C.J. and Ram Lall, J.*) AKBAR BADR v. EMPEROR 40 P.L.R. 890=177 I.C. 61 11 R.L 339=39 Cr L J. 907 (... A I.R. 1938 Lah.

——S. 164—*Confession recorded at 9 p.m. and accused afterwards not remanded to judicial lock-up—Value of confession.*

Where the confession had been recorded by the Magistrate at 9 o'clock in the night and the accused was not remanded to the judicial lock-up after the confession had been recorded.

Held, that the confession was not of ... (*Almond, J.C. and Mir Ahmad A J.C.*) ... CHAND v. EMPEROR. 174 I.C. 449=10 R ... 39 Cr.L J. 448=A I R. 1938 Pesh. ...

——S. 164—*Confession recorded under—Procedure—* ... *minal Rules*

... f the crimi- ... confession ... provided S 164 of the Cr P. Code is complied with (*Burn a* ...

——S 164—*Duty of Magistrate recording confession—Reasons for believing confession voluntary—If to be stated.*

It is not enough for a Magistrate recording the confession of an accused to give him a warning, but it is essential that he should put questions to sati... self that the confession was in fact voluntary, ... question with its answer must be recorded. ... enough that the Magistrate was satisfied as ... confession being voluntary, but the Courts befor... the confession is used must have materials on which they can be satisfied that the confession was in fact voluntary Hence the Magistrate who records the ...

——S 164—*Recording of confession—Subsequent custody of accused.*

...

they may be handed over to the Police for that purpose. There certainly ought to be an interval between the taking of the confession and the handing over of the accused to the Police for any subsequent purpose. (*Young, C.J. and Monroe, J.*) SURAT SINGH v. EMPEROR. 18 Lah 740=40 P L R. 214= 174 I C. 804=39 Cr.L J. 475=10 R L 600= A.I.R 1938 Lah. 292.

——S. 164 — *Requirements — Compliance with— Sufficiency.*

CR. P. CODE (1898), S. 164.

The accused on being produced before a M...

S. 164 was not appended to the confession but the Magistrate was examined as a witness and had deposed that he had satisfied himself that the confession was being made voluntarily and that he had told the accused that he need not make any confession to him and that if he made one it would be used against him ...

——S 164—*Retracted confession—Value.*

In the absence of any ...

confessions were retracted and that when they were made some ...

——S 164—*Scope—If controls S 29, Evidence Act—Confession recorded as dying declaration—Warning not administered—Admissibility—Duty of Magistrate.*

Where a Magistrate proceeds to record a statement of an injured person under S. 164, Cr. P. Code, without ...

not bound to make a confession, and should further satisfy himself by further questions that the confession is being voluntarily made. If the Magistrate does not ...

... L.W.N. 1525.

——S. 164—*Statement of witnesses—Right of accused to inspect.*

A Judge should not decline to allow the pleaders for the defence to see the records of statements made by the prosecution witnesses to a Magistrate under the pro... ... r to cross examine the ... an elementary principle ... person shall have free ... nal to all the records which are before the Court. The same considerations apply to the refusal to permit reference in cross-examination to the contents of charge sheet, for this also forms part of the committal record. (*Roberts, C.J. and Dunkley, J.*) BRAHMAYA v. KING. A I.R. 1938 Rang. 442.

——S 164—*Statement under—Value of.*

A statement of a witness obtained under S. 16... always raises a suspicion that it has not been ... tarily made. The section was not intended to ...

CR. P. CODE (1898), S. 164.

police to obtain a statement from some person and as it were to put a seal on that statement by sending in that person to a Magistrate practically under custody, to be examined before the judicial inquiry or trial, and therefore compromised in his evidence when judicial proceedings are regularly taken. (*Dhavle and Chatterjee, JJ.*) EMPEROR *v* MANU CHIK. 175 I C. 716 = 4 B R. 626 = 39 Cr L J. 635 = 11 R P. 11 = A.I.R. 1938 Pat 290.

——S. 164—*Statement of person to whom pardon has been tendered—Record of—Power of Magistrate taking cognizance of offence.*

A Magi[illegible]

the offence

whom par

(*Monroe a*

SINGH.

——S

put questions as to voluntary character of confession—Effect.

It is the duty of a Magistrate to r

in accordance with the clear prov

Code He must satisfy himself, by

questions, that the confession was no

undue influence. Where the Magist

tion the accused making the confe

the confession was being made of

after ascertaining how long he had

the police, there is a failure to observe an important provision of the Code intended to safeguard the volun-

10 R P. 402 = 39 Cr L J. 302 = 18 Pat.L T. 964 = A.I.R. 1938 Pat. 60.

——S. 173—*Order striking off case on police report—Nature of.*

An order of a magistrate on a police report under S. 173, Cr P. Code, that a case be struck off is an administrative order and not a judicial order. (*Blacker J.*) BRAHM DEV *v.* EMPEROR. 40 P L R 239 = 175 I C. 850 = 39 Cr L J. 646 = 11 R L 1 (1) = A.I R. 1938 Lah 469.

——Ss. 177 and 180—*Applicability—Conspiracy—Jurisdiction of Court is determined conspiracy was formed or made and act in pursuance of conspiracy is done*

Conspiracy is a substantive offence

given in one of the illustrations to S.

can it be brought within the meaning of this section itself. It is not one of the offences named in S. 181. The gist of the offence of conspiracy lies not in doing

therefrom that the scope of the conspiracy would determine the place where the conspiracy or part of it occurred. It is not the act done in pursuance of the conspiracy but the place where the conspiracy was formed or made which determines the jurisdiction of the Court

CR. P. CODE (1898), S. 181.

and in an indictment for conspiracy the venue should be laid where the conspiracy was and not where the result of such conspiracy was put in execution. The criminal conspiracy was formed, that is to say, the offence was committed in U.P., that is, outside the jurisdiction of the Sukkur Court. The accused also entered into a further conspiracy at Sukkur. The accused were however not charged with this second or further conspiracy at all. The two conspiracies were not parts of one transaction.

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rate has juris-

ice committed

within the local limits of his jurisdiction, and to try the case or to commit it to sessions. The fact that the

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sessions

OR *v.*

al 357.

meaning

—Com-

plaint for defamation on ground of deliberate falsity of charge—Jurisdiction—Arrest, if an essential part of

referred to in S. 179, Cr. P. Code, offence with which the accused ed Hence that section can apply only to a case where a person is charged with an offence not only by reason of some act committed by him, but also by reason of some consequence which has ensued from the Act. In the absence of any one of these two ingredients, the section would be wholly inapplicable. The section would have no application if the consequence is such that even if it had not taken place, the offence would have been complete. On a complaint for cheating under S. 420, I. P. Code, a warrant for the arrest of the accused at a different place was issued. The accused was subsequently tried and acquitted. But even

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contemplated by S. 179, Cr. P. Code and hence it could not give the Court in that place any jurisdiction to try the offence of defamation with which the opposite party was cha

v. AHM

it to the place to which he had to bring it does not necessarily constitute the offence of criminal breach of trust although a person may have to account for money; it is not the failure to account, but the misuse of the money for dishonest purposes, which constitutes the

CR. P. CODE (1898), S. 190.

offence. *K* was a partner in a firm *V* at Akyab and there was an agreement by which *K* was to go to Cochin and receive the consignment of rice sent by the firm and sell it there. He was required to submit accounts and pay the net cash balance resulting from

cognizance of an offence that happens to be reported to him by an officer who presides in a Court of Justice (*Allsop, J.*) TARA SINGH *v.* EMPEROR.

1938 A L J 528 = 1938 A Cr. C 45 = 11 R A 158 = 1938 A W R (H C) 361 = 176 I C 960 = 1938 A L R. 689 = 39 Cr L J 840 = A.I.R. 1938 All. 449.

——**Ss 190 (1) (c) and 191**—*Charge at the instance of Magistrate—Taking cognizance on ... Failure to comply with S 191—Trial, if*

When a charge sheet is filed against any ... instance of the Magistrate and the latter ... zance on such charge sheet, though apparer... is taken cognizance of on a police report, t... the Magistrate practically amounts to his taking cogni zance under Section 190 (1) (*c*), as he is the real originator of the proceedings. The principle of S 191 applies to such a case Failure ... of S. 191 vitiates the ... to be quashed (*Colds...* EMPEROR.

... procedure thenceforward and he is not in any way disqualified from proceeding with the trial. (*Burn, J.*)

Necessity.

The terms of S. 192, unlike S. 528 (5) of the Cr. P. Code, does not require that an order of transfer under

CR. P. CODE (1898), S 195.

that section should be in writing. (*Guha and Biswas, JJ.*)

——**S. 192**—Transfer by Magistrate not competent to transfer—If cured by S. 529 (*f*). *See* CR. P. CODE, S. 529 (*f*). **42 C W N. 246.**

——**S. 195**—*Applicability—Offences requiring sanction and offences not requiring sanction committed in same transaction—...*

obtaining of sanction for prosecution of the offences requiring sanction. The law only requires that for the ... offences sanction of the ... it does not say that if in ... offence requiring sanc... ces are committed, the ...

... the Civil Court peons for some time. The accused were convicted under S. 143, I. P Code. It was contended that there having been resistance to the ... sed could not be prosecuted ... nlawful assembly or rioting ... Court which issued the writs

... ful assembly was a separate ... rate charge was permissible ... it was immaterial that there ... ed by S. 195, Cr. P Cod...

(*Mahomed Noor and Rowland, JJ.*) SHEO AHI... EMPEROR. **19 Pat.L.T 665 = 1938 P W N ... 178 I.C. 487 = A.I.R. 1938**

CR. P. CODE (1898), S. 195.

——(as amended in 1923), S. 195—*Procedure under—Sanction for complaint.*

The old system of sanctions is now
Court or officer concerned does not sanct
tion. The Court or officer concerned
plaint direct Where therefore a compl
made by the Sub Inspector concerned,
sary administrative sanction, no
necessary. (*Davis, J.C and Mehta,*
HIRANAND *v.* EMPEROR.

A.I

——S 195 (1) (a)—*Complaint in writing of public*

Code, and consequently the proceedings before the
Magistrate should be quas
HABIB *v.* EMPEROR.

10 R N. 162=172

——S. 195 (1) (a)—*Enqu*
plaint—Mode of.

Per Patterson, J.—The
proceedings with a view to
under S. 195 (1) (*a*), Cr. P.
form of a public judicial enq
making a complaint is of cou
quiry ought to be of a purely administrative character and need not be made in public; nor need the statement of witnesses be recorded on oath. (*Jack and Patter JJ.*) RAMESH CHANDRA PODDAR *v.* HARI MOH
PODDAR. 42 C W.N

——S 195 (1) (a)—*Orders of Subordinate District Judges—Nature of—Revision.*

——S. 195 (1) (a)—*Petition filed before District Magistrate—Latter sending it for enquiry to Sub Divisional Magistrate—Cognizance of offence under S. 182, I. P. Code against petitioner—Jurisdiction of Sub-*

(*Bartley and Khundkar, JJ.*) N. MUKHERJEE, CIRCLE OFFICER, VISHNUPUR *v.* RAMKINKAR PALIT.

67 C L J. 583.

——S. 195 (1) (a)—*Refusal to make complaint by Subordinate Judge—Power of District Judge to make complaints—Civil Court peon, if subordinate to latter.*

CR. P. CODE (1898), S. 196.

A public servant is not barred from making a com-

——S. 195 (1) (b)—*Applicability — Offence not*

I L R (1938) Lah. 188=40 P.L R. 951=
A.I.R. 1938 Lah. 641.

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rdinary or
xtra Assis-

Petition to Sub-Inspector
y—Allegation of offences
rotection against claim—
ty. *See* PENAL CODE,
S. 499, EIGHTH EXCEPTION.

1938 M.W N 871 (2)=(1938) 2 M L J. 397.

——S 196—*Order sanctioning prosecution—Form of and compliance with.*

an Inspector of Police, authorizing the latter to prefer a complaint and the letter was signed by the Senior Officer in the office of the Deputy Inspector-General for the Deputy Inspector-General The complaint was accordingly filed by the Inspector to whom the letter was addressed.

CR. P. CODE (1898), S. 196.

Held, the complaint was properly filed and was in accordance with the order sanctioning the prosecution. (*Hor*

——**Ss 196 A (2) and 195**—*Object of conspiracy to commit non cognizable offence—Some of accused parties to proceedings in which offence committed—Sanction, if necessary.*

Where a non cognizable offence is committed and several persons are charged for conspiracy to commit the offence but some only of the accused are parties to the proceedings in which the offence was committed, sanction is not necessary in the case of such accused but is necessary in the case of the others who are not parties to the proceeding. (*Young, C.J. and Tek Chand, J.*) EMPEROR *v* NAND LAL. **40 P L R 815 = 176 I C. 654 = 11 R L 221 = 39 Cr.L J. 765 = A.I R 1938 Lah 526.**

——**S 197**—*Applicability—Conditions necessary.*

For S 197 (1), Cr. P Code, to apply, it must be shown that the accused was a public servant both at the time of the offence and at the time when he is accused, that

against h

(*Bennet,*

1

——**S 197**—*Applicability—"Judge"—Village police patel—Offence by in the course of duties while trying case—Prosecution—Sanction of Local Government—Necessity—S. 1 (2)—Scope and effect of.*

A village police patel trying and disposing of a case in exercise of his powers under S. 14 of the Village

be followed by the village police patel is not to be governed by the Cr. P. Code. (*Beaumont, C.J. and Sen, J.*) EMPEROR *v*. SHANKAR SAYAJI DALVI. **40 Bom L R. 1106 = A I.R. 1938 Bom. 489.**

CR. P. CODE (1898), S. 202.

——**S 197**—Prosecution of Sub-Inspector of Police—Previous sanction of Local Government—If necessary. *See* POLICE ACT, S. 7. **1938 Rang. L R. 104.**

——**Ss. 198 and 199**—*Object of—Husband himself not complaining of offence under S. 494, I. P. Code—Power of Court.*

The purpose of Ss 198 and 199 is to make sure that the offences to which they refer are not made the subjects of complaint except by aggrieved persons.

Where therefore the husband files a complaint under Ss. 363, 342 and 506, I. P Code, and does not himself complain of an offence under S 494, I. P. Code, it is not open to the Court to force upon him, as a complainant, the character of an aggrieved husband, which he does not wish to assume. (*Davis, J. C. and Haveliwala, J*) EMPEROR *v*. GULAB. **176 I C. 98 = 11 R S. 16 = 39 Cr.L J 686 = A I.R. 1938 Sind 141.**

——**S. 200**—*Duty of magistrate—Name or number of Act or section—Mistake in—Procedure.*

It would not be right to say that merely because the complainant, whether in ignorance or inadvertence, mentions the wrong Act or mentions the wrong Section, there is no complaint within the meaning of S 200. It is true that if such errors occur in the complaint, care

mistake is a mistake which can subsequently be rectified. (*Davis, J C. and Mehta, J.*) LILARAM *v*. WADHUMAL. **A I R 1938 Sind 209.**

——**S 200**—*Examination of complainant—Necessity—Report by Judge of Civil Court.*

According to S. 200, Cr. P. Code, it is unnecessary

176 I C 960 = 1938 A.L R 689 = 39 Cr L J. 840 = A.I.R. 1938 All 449.

——**S. 200**—Failure to record statement of complainant—If curable under S. 537. *See* CR. P. CODE, S 537—EXAMINATION OF COMPLAINANT.

CR. P. CODE (1898), S. 202.

——S 202—*Enquiry under—Protracted proceedings deprecated.*

Dilatory and protracted proceedings under S 202, Cr. P. Code are to be depr *and Khundkar, JJ.)* AJIT NATH D CHANDRA KAYAL.

——S. 202—*Procedure — Direction to clerk to* *Magistrates.*

clerk to perform and making the r. P. Code. He must do them himself. (*Weston.*) LADHU *v.* PHUL CHAND. 1937 A M.L J. 140.

——S 202—*Scope—If applies to transfers under S. 528.*

The 1st part of S. 202 applies only to cases in which the Magistrate has taken cognizance not include a case which is transferr under *S. 192* comes within the amb S. 202 but not transfer under S. 528, language is clear it is not for a Court mind of the legislator or to indulge that the case of a transfer under S 52 when the section was amended. (*Gruer, J*) QAMARALI *v.* MST. TULSI 178 I C. 54=39 Cr.L J. 981= A.I.R. 1938 Nag. 433.

——Ss 202, 203 and 204—*Scope—Cognizance of case by Magistrate—Procedure on.*

The granting of a summary A, B or C is a mere administrative matter, while the dismissal of the complaint requires a judicial order under S. 203, Cr. P. Code Ordinarily, when a Magi of an offence on a complaint, complainant on oath and redu examination to writing, and if h the issue of process, he acts in accordance with S. 202, Cr. P Code, and then if after inquiry he wishes to dismiss the complaint he acts under S. 203, Cr. P. Code. But that section contemplates that he should exercise *his own independent judgment, and if he does not wish* to postpone the issue of process, then he acts under S. 204 and the following sections. (*Davis. J C.*) PHERUMAL LILARAM *v.* EMPEROR 177 I.C. 744=11 R S 67= A.I.R

——S 202—*Stage for holding inq*

A reference under S. 202 cannot b dence has been taken for the complai issued. The Magistrate cannot go stage reached by his predecessor. A necessary preliminary to an inquiry under S. 202 is postponement of issue of process. Where that was not done by the first Court, which in fact procured the attendance of the accused, the stage for holding inquiry under S 202 has therefore passed and cannot be revived subsequently. (*Gruer, J.*) QAMARALI *v* MST. TULSI. 178 I.C. 54=39 Cr L J. 981= A.I.R. 1938 Nag. 433

——S 203—Revision—Refusal to issue process— Failure SS. 435

Judge Sessions.

CR. P CODE (1898), S. 215.

Where an accused, who is being tried by a Magistrate for an offence under S. 409, Penal Code, makes an ap-

A I.R. 1938 Cal 416.

——S. 213—*Committal—Power and duty of magistrate.*

The Magistrate who having the powers to punish adequately for an offence which is within his jurisdiction fails to do so and commits the accused to Sessions Judge, fails to comply with the provisions of S 254, Cr. P. Code, and the *committal may on that ground* be held bad as being an error of law. Where therefore the property stolen is water melons of the value of six annas

A.I.R. 1938 Sind 79

——S. 213—*Committing Magistrate—Duty of—Power to weigh evidence.*

A committing Magistrate is entitled to, and indeed must weigh the evidence in the case. Although it is not his duty, as it would be in a case which he could try himself, to decide, whether the case has been proved against the accused beyond all reasonable doubt, he

If he is of opin the accused on discharge the a *v* EMPEROR.

——S. 215—*Quashing commitment—Grounds—Insufficiency of evidence on record for conviction.*

of law—Meaning.

Under S. 215, Cr. P. Code, a committal can be quashed only if the order of committal is against law, in the sense that there was any error of law in the proceedings of the magistrate before committal. (*Pandrang Row*

——S 215—*Quashing of commitment—Power of Sessions.*

presiding over the power under S 215 to him by a competent Magistrate. (*Mackney, J.*) M. I. MAMSA *v.* THE

KING. 174 I C 824=39 Cr.L.J. 470= 10 R R 433=A I R. 1938 Rang. 105.

——S 222—*Charge of conspiracy under S. 120 B—Particulars—Necessity.*

There is a distinction between the charge of an offence and a charge of conspiracy to commit such an offence. In the former, particulars as required by the Code are necessary. But it is well settled that in stating the

174 I C. 515=39 Cr.L J 417=10 R C 693=

——Ss 222, 233, 234, 23

scope of—Joinder of charges—

conspiracy—Acts done in pursuance of conspiracy—Separate charge and punishment for—When justified

Ss. 235 and 239, Cr. P. Code, are not controlled by the latter part of S 233 or by S.

committed in the course of the

may be tried together, although

three in number and extending over a period of more than a year. But there is nothing in S. 235 or 239 to

whether the illegal acts have or have not been carried out. But acts done in pursuance of the conspiracy cannot be separately punished unless these acts are separately charged and particularised as required by the Code. S. 239 (4) does not justify omnibus charges relating to an indefinite number of offences alleged to have been committed within the period stated without anything to specify time, place or circumstances or even which of the accused persons are supposed to have committed any particular offence (*Broomfield and Norman, JJ.*) EMPEROR *v* KARAMALLI GULAMALLI

40 Bom L R 1092=A I R 1938 Bom 481

——Ss 222 and 233—*Scope—Alternative charges—*

victed under one or other of the alternative charges, they should not be convicted under both (*Davis, J.C. and Lobo, J.*) EMPEROR *v* BALUMAL HOTCHAND

177 I C 316=39 Cr L J 890=11 R S. 58= A I.R 1938 Sind 171

——Ss 222 (1) and (2)—*Charge under Ss. 109 and 302, Penal Code—Species of abetment not specified—Sufficiency of notice to accused*

Ss. 222 (1) and (2), Cr. P Code, require, that the charge should contain such particulars as are reasonably sufficient to give the accused notice of the matter with which he is charged and th

given any specific name,

name only. So it is open t

abetment generally, and

establish abetment other than in one particular form, to rely on this particular form for a conviction. On the facts of the case where the accused was charged with an offence punishable under Ss. 109 and 302, Penal Code,

Held, that it cannot be said that the nature of the case was such that the non-particularisation of the species of abetment charged resulted in withholding such

notice as the accused were entitled.

JJ.) HARENDRA KUMAR

66 C L J 196=

10 R C. 607=39 Cr L J 395= A I.R. 1938 Cal. 125.

——S. 225—*Cheating—Consequence by which decep-*

non-criminal deception and becomes one of cheating within the meaning of S. 415, I P. C., and the effect

——Ss 225 and 537—*Misjoinder of charges—Ir*

19 Pat L T 343=1938 A L R 309= 10 R.P.C. 250=4 B R 490=39 Cr L J 452= 67 C L J. 161=40 Bom L R 787= 174 I.C 1=42 C W N 621= 1938 A W.R (P. C.) 116=1938 P W N 320= 1938 A Cr C 27=1938 O W N 416= 1938 A.L J 382=A.I R 1938 P. C 130= (1938) 1 M.L J 647 (P.C.).

——S. 225—*Scope—Mistake or doubt as to particular weapons used—Effect—If entitles accused to absolute acquittal—Conviction for lesser offence instead of more serious offence—Sustainability*

What is called the benefit of doubt is not the same

aside a conviction. The accused, though they may not be convicted for a more serious offence in the absence of proof of use of particular weapons, may still be convicted of a lesser offence (*King, J*) PALANI GOUNDAN *v*. EMPEROR. 1937 M.W N 1331.

——S. 226—*Substitution of charge so as to deprive accused of right of trial by jury—Propriety.*

Where the committing Magistrate framed charges of murder against some of the accused and abetment of murder against others, but when the case came on for hearing in the Court of Sessions, the Judge substituted

that the

tried

CR. P. CODE (1898), S. 227,

Held, that the accused were not properly tried when they were deprived of a trial by a jury b[illegible] of this kind. (*Cunliffe and Henderson*, *v*. EMPEROR.

——S. 227 (1)—Addition of charge CR. P. CODE, S. 350. 1

——S. 233—*Joint trial—Legality—under Ss.* 148 *and* 333, *I. P. Code.*

The legality of a joint trial depends upon whether the [illegible]

legal. (*Gruer, J.*) NANA *v*. EMPEROR.
1938 N.L.J. 90 = A.I.R. 1938 Nag. 283

——Ss 233 to 239—*Misjoinder—Test of legality.*

The test whether a trial is or is not bad owing to a misjoinder of charges is not the number of offences with which he has been charged The trial is bad not because the accused has been wrongly convicted but because he has been wrongly tried. It is the multiplicity of charges which vitiates the trial and prejudices the accused in his defence (*Davis, J C. and Lo*[illegible] BALUMAL HOTCHAND.
39 Cr L J. 890 = 11 R.S. 58 = [illegible]

——Ss. 233 and 537—*Offen*[illegible] *abducting in respect of same* [illegible] *charges—If necessary.*

——S. 234—*Offences of same kind—Murder and grievous hurt.*

Murder and grievous hurt are not offences of the same kind and [illegible] *and Khundka*[illegible]

——S 235- [illegible] 323 *and* 325, *I* [illegible]

An offence u[illegible] a substantive [illegible] there is no ille[illegible] that section in [illegible] 325, I. P. Cod[illegible] EMPEROR.

——S 236 [illegible]

CR. P. CODE (1898), S. 235.

Held, that though strictly speaking a joint trial [illegible]

of rape committed either on an indefinite date or between periods extending from six weeks to six months, the time covered being from September 1936 to June 1937. The charge under S. 377 specified an offence committed between end of December 1936 and June 1937. The charges found were either so vague and general as to be bad in law or were in the alternative absurd. Neither of the offences was a continuing offence. The whole story was vague in details and [illegible]

[illegible] *drivers of several motor lorries—* [illegible]*iety.*

[illegible] lorries were engaged at Calicut in Malabar District to deliver bags of grain at Pollachi in the district of Coimbatore. In some cases the owners and in other cases both the owners and drivers were [illegible]

[illegible]*ge for hurt—Legality.*

CR P. CODE (1898), S. 235.

Where hurt is caused to the victim of robbery though not at the time of committing the robbery but subsequent to its commission, during the effort of the offender to get away with the property, a separate charge in respect of the hurt is not sustainable. Robbery by its definition includes hurt caused not only in order to committing of the theft or in committing the theft, but also in carrying away the property obtained by the theft (*Khaja Mahammad Noor and Dhavle, JJ.*) EMPEROR v. HARIA DHOBI. 18 Pat. L.T. 857=10 R P. 346=
172 I C. 780=4 B.R. 165=39 Cr L J. 156=
1937 P.W N. 868=A.I.R. 1937 Pat. 662.

——S. 235—Scope—If controlled by Ss. 222, 233

——Ss 236, 237 and 423—*Charge under S. 323, I. P. Code, but conviction under S. 452—Legality—Test—Question of prejudice.*

Though it is not illegal to convict a man of an offence under S. 452, I. P. Code, in a case in which he has been charged under S. 323, I. P. Coc
the wording of Ss. 236 and 237 of th
yet in each case the question to be
be whether the accused has or has not be
in his trial by the fact that the ch
under the wrong section. Whe
nor does appear that there was
tion with a view to ascertain
question was a building or not
S 442, I. P. Code, the alterati
cause injustice to the accused and a
cannot in appeal alter the convicti
I. P. Code, to one under S. 452, I. P
J

42 C.W N 129.

——S. 239—*Charge under S. 401, I. P. Code—Joint trial of all members of gang—Legality.*

In a prosecution under S. 401, I. P. Code, all the members of the gang can be tried together for the

——S. 239—*Conspiracy—Each accused charged with one or more of seven specific offences—Legality.*

suance of the conspiracy the charges are not contrary to law and there is no misjoinder (*Guha and Lethbridge, JJ.*) AKHIL BANDHU RAY v. EMPEROR.

CR. P. CODE (1898), S 239.

I L R (1938) 1 Cal. 588=175 I.C. 409=
10 R C. 790=39 Cr.L J. 596=A I.R. 1938 Cal 258.

——S. 239—*Construction and scope—More than one person charged and tried in same trial—Legality.*

The clauses of S. 239, Cr. P. Code, are mutually exclusive in the sense that they cannot be added one to another so as to bring some of the persons charged under one clause and some under another and so to put them upon their trial all together at one and the same time; but they are not mutually exclusive in the sense that persons accused of an offence and persons accused of abetment or of an attempt can only be tried at one trial because their case comes under Cl. (*b*) But if more than one person are to be tried and charged

A joint trial in violation of the express provisions of
Code, is not illegal or void *ab initio* if it
ned failure of Justice and has not pre-
ccused in his defence on the merits.

——S 239—*Misjoinder of charges—Question of*—

nder—Defamation by several—
—Legality *See* PENAL CODE,
1938 A.W R (H C) 467=
1938 A L J. 769

——S 239—*'Offence'—Meaning of*

The term 'offence' under S. 239 includes minor or alternative offences within the meaning of S. 235 (2) or S. 236. (*Davis, J. C and Havelivala, J.*) CHUHARMAL NIRMALDAS v. EMPEROR.
177 I C. 280=39 Cr.L J. 881=11 R S 53=
A I.R. 1938 Sind 164.

——Ss. 239 and 342—*Scope—Charge of same offence against several persons—Separate trial of one in order to enable him to give evidence against other—If justified—Discretion of Magistrate—Accused separately tried—If competent witness against co accused tried separately*

rate trial of one of several persons alleged to have committed the same offence, simply in order that his evidence may be available against the others

CR. P. CODE (1898), S. 239.

it cannot be said that a Magistrate allowing a separate trial of one of several co-accused acts unjudicially. Such a person who is to be tried separately from the others is not accused for purposes of S. 342, Cr. P. Code, so far as the trial of the other accused persons is concerned and he is a competent witness in the case against them. "Accused" in S. 342 means the accused then under trial and under examination by the Court, and cannot include an accused over whom the Court is

——S. 239—*Three "transactions" of same kind—Joint trial—Legality*

Under Cl. (c) of S. 239, Cr. P. Code, three offences of the same kind may be tried at once, but not three

piracy and acts done in pursuance thereof—Joint trial:

Special considerations attach to a charge of con-

of

the

1938 O W.N 416=1938 A L J. 382=
174 I C 1=1938 A.W R (P C.) 116=

circumstance which makes the act of one the act of each and all the conspirators) these acts are committed in the course of the same transaction, which embraces the conspiracy and the acts done under it. The common concert and agreement which constitute the conspiracy, serve to unify the acts done in pursuance of it. (*Lord Wright.*) BABU LAL CHOUKHANI *v.* EMPEROR.

65 I A. 158=32 S L R. 476=1938 O.L R. 189=

CR. P. CODE (1898), S. 250.

1938 O A. 398=1938 M.W.N. 505=
19 Pat.L T. 343=1938 A L R 309=
10 R.P.C. 250=4 B R 490=39 Cr.L J. 452=
67 C L J 161=40 Bom L R. 787=
42 C.W N. 621=1938 A Cr.C 27=
1938 O.W.N. 416=1938 A L J. 382=174 I.C 1=
1938 A.W.R. (P.C.) 116=1938 P.W.N. 320=
A I.R. 1938 P.C. 130=
(1938) 1 M L J. 647 (P.C.).

—Legality—Stolen property of same theft.

the stolen properties in charged under S. 414, the same theft, the case provisions of S. 239 (f), the accused along with rties were recovered is consequently illegal. The irregularity is not such as could be remedied by S. 537, Cr. P. Code. (*Jack and Khundkar, JJ.*) RAM KHELAWAN KAHAR *v.* EMPEROR.

42 C.W.N. 729=11 R C. 113=
176 I C. 525=39 Cr L J. 739=
A I R. 1938 Cal 525.

—Scope—Prosecution under Sugar Excise harge—Necessity—Duty of Magistrate to ingredients of offence.

ase tried as a summons case, it is of course not nt on the Magistrate under S. 242, Cr.P. Code, a formal charge against the accused. But when the prosecution is under an Act of very recent date (the Sugar Excise Duty Act of 1934), with the as the lawyers if the Magisrises the ingreis required to accused before HARI RAM *v.*

P.W.N. 426=
175 I C 531=4 B.R 602=10 R P. 634=
r L J. 610=A I R. 1938 Pat. 440.

e shown by complainant—Duty of

ate does not record any statement cause against his but merely states sufficient. The by the complain-

——S 250—*Discretion of Magistrate—Interference*

of compensation in such a case save for very cogent reasons. (*Mackney, J.*) L R. ABROL *v.* S. L SIRPAUL. 175 I C 357=10 R R. 488=39 Cr L.J. 587=
A I R. 1938 Rang 200.

——S 250—*"Magistrate by whom case is heard"—Meaning—Complaint under S. 452, I. P. Code, transferred to 3rd class Magistrate—Power of latter to order compensation*

Court but sent to him by a Sub Divisional Magistrate under S. 192 or S. 528, Cr. P. Code. The 3rd Class Magistrate is perfectly competent to deal with the case until he comes either to discharge or to charge with an offence which he is competent to try or to take action

only after considering the cause shown by him that an order can be passed directing him to pay compensation. (*Baguley, J*) MA E MYAING *v* THE KING

1938 Rang L R 163=176 I C 508=11 R R 52=39 Cr L J. 743=A I R 1938 Rang 247.

——S. 250—*Order for compensation—Parties on bad terms—If proves falsity of charge.*

The fact that the parties are on bad terms is not a sufficient ground for holding that a charge brought by one against the other is a false one, and consequently an order for payment of compensation merely on such ground is without justification. (*Mackney, J*) MAUNG PAN *v.* MAUNG MYA DIN. 176 I C 199=39 Cr L J 704=11 R R. 38=A I R. 1938 Rang 209

——S 250—*Order under—Omission to record reasons—If vitiates proceedings.*

It is the duty of the Magistrate ordering compensation to be paid to the accused under S. 250, Cr. P. Code, to record his reasons for passing such an order. The recording of the reasons is a condition precedent to the proper exercise of the power under the section. An order for compensation passed without recording reasons is, therefore, illegal and is liable to be set aside. (*Thomas, C.J.*) BHAGWAN DIN *v* JAGDAT. 173 I C 613—1938 O L R 132=19 O A ... 1938 O W N 288=1938 A Cr C 26=1 ... 39 Cr L J 378=A I R 19...

offence after a certain stage. Ss. 252 and 256, Cr P Code, are not intended to prohibit such admission Every Court has an inherent power to allow evidence to

——S 252 (1)—*Omission to examine complainant—If vitiates trial.*

If the Court neglects to examine the complainant on the day when the accused appears in answer to the summons, it no doubt fails to comply with the provisions of S. 252 (1), Cr. P. Code, but that would not

tion of Magistrate.

Sub-S (1) of S. 252, Cr. P. Code, refers only to such evidence as is offered on the day when the accused appears or is brought before the Court; it only refers to the initial production of the accused, and not to every

produced in support of the prosecution" refers only to such witnesses as the complainant may bring with him and who have not been summoned by the Court If on the day when the accused appears in answer to the summons, the complainant has no witnesses present with him, there is no evidence produced in support of the prosecution, and sub-s (2) of S 252 then comes into play. What this sub-section authorizes is what is done in every complaint case under another name: the filing of a list of witnesses whom the complainant desires shall be summoned. If the list is filed and summonses are issued in respect of the persons named therein, the first stage contemplated in S. 252 (1) passes, and the hearing of any unsummoned witnesses thereafter is a matter within the Court's discretion (*Grille, J.*) RAHAT ALI *v* MUHAMMAD MURAD 10 R.N 161=172 I C 113=39 Cr L J. 62=A I R 1938 Nag 103.

——S 252 (2)—*Summoning of witnesses—Discretion of Magistrate.*

A Magistrate is bound to summon under S. 252 (2) at the expense of Government such of the complainant's witnesses as he considers necessary Mere fact that the

examination of some witness and framing of charge against rest—Reasons for discharge not given then and there—Legality—Power of Magistrate to defer giving ... 537, *Cr. P Code*

... Magistrate has ... stage when he ... is groundless, ... ecorded by him ... tion of most of ... that in the in- ... t be proceeded against some of the accused persons and that it is not necessary to examine the other witness so far as they are concerned, it is perfectly competent to him to discharge those accused and to frame a charge against the rest of the accused alone If he does not give reasons for such discharge then and there, intend:

give them at the time of making the final order in the case in respect of the other accused, he does not act illegally in withholding his reasons and postponing them until the final order in the case. There is nothing in the language of S. 253 which precludes him from doing so. He does not become *functus officio* on pronouncing the order of discharge, he would become so only when he pronounces the final order in the case. Assuming that it is obligatory on the Magistrate to give his reasons before pronouncing the order of discharge, the omission to do is only an irregularity curable under S 537, Cr. P. Code, particularly when there is no ... failure of justice has been occasioned ... *kataramana Rao, J.)* GOVINDARAJ ...

1938 M.W N. 38=47 L W. 12...
10 B M. 583=39 ...
A.I.R. 1938 Mad 396=(1938) 1 ...

——Ss 256 and 540—*Right to produce ... ses after recording of plea of accused—Prope...*

The wording of S 256 Cr. P. Code, d... the prosecution the right to require after the ... accused has been recorded, that witness...

... under S. 540, if the required circumstances exist. *(Weston, I.C S)* BAL CHAND *v.* SUKH DEO.

1938 A.M L J. 78.

——S. 257—*Issue of process—If obligatory, when* ...

——S 257—*Process issued to def... Duty of Magistrate to secure his attend...*

When once a Magistrate issues proces... witness, he is bound to follow up that ... defence so desires, and to take all pos... secure the attendance of that witness. Th... Magistrate to follow this procedure ar... order whatever on the petition filed b... re summoning the witness, vitiates th... ceedings. *(Patterson, J.)* RAMDH... GIRDHARI MONDAL.

——Ss 257 (2) and 544—*Summoning of w... —Order as to deposit for expenses—Powers of ... trate.*

The Cr. P. Code gives a Magistrate a discre... pass an order under S ... ject to S 544 and rules ... accused in a case unc... 288 witnesses of differe... tions, with no attempt to show how they were necessary, a Magistrate is fully justified in passing an order under S. 257 (2) directing the deposit of the reasonable expenses of the witnesses as ... being summoned. *(Benn...* EMPEROR *v.* MAHTAB S...

——S. 259—Illegal o... Proper procedure. *See* C...

1938 A.M L J. 4...

——Ss 260 and 263 (h)—*Recording reasons—Form and substance—Object of safeguard.*

In cases of summary trial, it is desirable that the magistrate should set out so much of the reasons that

have influenced him as to satisfy the accused that his mind has been applied to the ingredients necessary in law for the conviction of the accused. Though the reasons have to be recorded with brevity, the brevity should not be such as to tend to obscurity. These safeguards are essential, so that the High Court can have before it in case of revision, sufficient materials on record to satisfy itself as to the correctnese or otherwise of the order. *(Thomas, C. J.)* BAIJOO *v.* EMPEROR.

1938 O.L.R. 512=1938 A.W.R. (C C.) 123= 1938 O.W.N. 1130=1938 O A. 915.

...

174 I.C. 685=10 R.S. 259=39 Cr L J. 474= A.I.R. 1938 Sind 70.

——S 269 (3)—*Applicability—Joint trial of several persons, some charged with murder and some charged* ...

... *English—If incompetent to act as ... Court as Hindi—Trial, evidence and arguments in Hindi—Evidence taken down in English—Some documents in English—Effect—Trial—If bad.*

Where the language of the Court is Hindi ...

... in an assessor trial did not know English, but knew only Hindi, would not therefore render the proceedings or trial illegal. There is no similar provision correspnoding to S. 282 (which applies to the case of jurors) in the case of assessors, but assuming that the principle of

CR. P. CODE (1898), S. 284.

——S. 285-A—*Construction—'And is so tried'—Meaning of.*

The words 'and is so tried' in S. 285-A, Cr. P. Code,

... in committal Court—Duty of Public Prosecutor—Judge if can only advise or also direct.

Where a witness had been examined as a witness in

CR. P. CODE (1898), S. 297.

... S. 411—Interval between commission of offence and finding of property with accused—Duty of Judge to direct jury to consider interval—Presumption under S. 114 Ill (a) Evidence Act—When ...

A I R 1938 Pat 579.

——Ss 297 and 298—*Duty of Judge—Omission of*

... been guide inno- e first

CR. P. CODE (1898), S. 297.

separate finding regarding each accused and that the particulars of the evidence affecting each accused should be placed in a manner which may enable the jury to distinguish the cases of accused as against whom the evidence is not of the same degree of cogency. Where the

A I R 1938 Pat. 579.

———Ss. 297 and 298—*Duty of Judge—Statement to police—Omission of names of accused in—Effect of—Judge's duty in charging jury—Judge merely citing observations from old decision—Pro*

The giving of advice to the jury
statements to the police as of one le
should be deprecated. If it is the p
the police-officer's notes in any partic

stood what is really meant by the answers elicited from

omissions and they must be invited to apply it The Judge's duty is no properly discharged by merely citing

———S. 297—*Misdirection—Charges of dacoity and of conspiracy to commit dacoity against several accused—Omission by Judge to deal with evidence against each accused on charge of dacoity.*

In a case where there is a general charge of conspiracy against a number of accused to commit dacoity and, at the same time, a charge against the accused for having committed a dacoity it is most necessary that the Judge in summing up to the jury should distinguish between what is evidence against each of the accused on the charge of conspiracy and what is evide
of the accused on the charge of havin
dacoity. That is more than ever nece
main evidence against the accused or

CR. P. CODE (1898), S. 298.

stolen property, the Sessions Judge in his charge to the Jury referred to the evidence and also to the fact that the witness was in all probability a receiver of stolen property. It was held that the failure to point out with sufficient force, the unsafety of relying on such evidence,
nt from that of an accomplice
misdirection. (*Horwill, J.*)
1938 M W.N. 96=
175 I C. 416=10 R.M. 774=
80=A I.R 1938 Mad. 464=
(1938) 1 M L J. 234.

———S. 297—*Misdirection—Non-reference to minor matters.*

Where the entire evidence is summarized before the

297—*Misdirection—Sexual offences—Evid- prosecutrix—Omission to give jury special caution*

The fact that the Judge's charge to the jury did not

before the Magistrate, the best course for the Sessions Judge is to draw the attention of the jury to those
the opinion of the
nsequence, it would
before the jury and
r those omissions are
dit the testimony of
rt. General observations devoid of facts are likely at some occasions to create an impression in the mind of the jury that every omission in every case is of no consequence whatsoever. (*Noor and Varma, JJ*) BULAK GOPE *v.* EMPEROR.
178 I C. 334=5 B R 88=1938 P W.N. 696=
A I R 1938 Pat. 575.

———S. 298—*Duty of Judge under—Absence of evidence to go before jury—Duty to direct verdict of not guilty.*

Under S. 298, Cr P. Code, it is the duty of the Judge
arising in the course of the
is a preliminary question,
whether there is any evid-
properly find the question

duty of a Judge to make out a case for the which he thinks that a verdict of not guilty

v. EMPEROR. **I.L R (1938) 1 Cal 636 = A I R. 1938 Cal. 658.**

——S. 307—*Duty of the High Court—Disagreement with the unanimous verdict of the Jury—Exercise of powers—Considerations.*

In disagreeing with the unanimous verdict Jury, the High Court has to consider whethe Jurors were entirely unreasonable in the conc arrived at by them or whether it was impossible fc Jurors to say that the guilt of the accused had been proved The High Court does not exercise the power vested under S 307, Cr P. Code, in setting aside the verdict of the Jury, unless it is perverse or patently

66 C L J. 351 = A I.R. 1938 Cal 295.

——S. 307—*Interference with verdict of jury—Powers—Scope and extent of.*

In cases where there has been a verdict of not guilty, it is the practice not to reverse the verdict unless it is perverse or manifestly wrong On the other hand, where the jury has returned a verdict of guilty, the matter stands in a different footing Having regard to the

I L R (1938) All 483 = 175 I C 150 = 1938 A W R (H C) 217 = 1938 A Cr C 20 = 10 R A 645 = 39 Cr L.J. 559 = 1938 A L R 381 = A I R 1938 All 227

——S 307—*Powers of reference under—Case triable with aid of assessors—Judge agreeing with verdict of jury—Reference—Competency*

A Sessions Judge has no power under S 307, Cr. P. Code, to refer to the High Court a case in respect of offences triable with the aid of assessors, nor has he any

——S. 307—*Scope—Case tried by Assistant Judge partly by jury and partly with assessors—Latter*

Reference to High Court of only part tried by

an absolute rule that in a the aid of assessors and to the High Court under

HARIA DHOBI. **172 I.C 780 = 4 B R 165 = 39 Cr L J. 156 = 10 R P 346 = 1937 P W N 857 = 18 Pat L T. 857 = A I R 1937 Pat. 662.**

——S. 307 (3)—*Duty of High Court.*

——S 309 (2)—*Contents of Judgment.*

In a trial with assessors it is the duty of the presiding Judge to ascertain the opinion of the assessors after summing up the evidence to them if he thinks it neces- udgment Code, Judge's e Judge merely states that he agrees with the opinion of the assessors (*Derbyshire, C. J and Panckridge, J.*) NIRMAL KUMAR BHOUMIK v EMPEROR

177 I C 29 = 11 R C 209 = 39 Cr L J 835 = 42 C W N 896 = A I R. 1938 Cal 551

——Ss 326 and 327—*Scope—Requisite number of assessors not present—Trial with assessor included in list but not summoned—Legality.*

of assessors was not pre- nan who was present in or to make up the num- included in the list of not summoned for any

t illegal. (Necessity for s regarding choosing of id Noor J.) (*Mohammad* ROR v. RAMSIDH RAI

L J 725 = 10 R.P. 79 = = A I R 1938 Pat 352.

——Ss 326 and 327—*Scope—Requisite number of assessors summoned not present in Court—Judge summoning person present in Court—Latter's name on list of persons qualified—Choosing of latter and those previously summoned and present as assessors—If illegal or improper.*

S. 326 of the Cr. P. Code is not mandatory, it only lays down the procedure 'ordinarily' to be followed. S. 327 gives the Court an emergency power to cause jurors or assessors to be summoned when such direction

persons previously summoned and the fourth gentleman summoned on the date of the trial.

Where a Magistrate had recorded the evidence and the second Magistrate merely recorded the claim for a

Right of accused to de novo *inquiry before charge.*

An accused is not entitled under S. 350

he does not feel it necessary to examine ar afresh, it is not incumbent on him to do so. J.)

who *thing—Retransfer of the former magistrate—* *demand* de novo *trial—Object of S* 350.

Where a magistrate after examining the pros witnesses and recording the statement of the and framing a charge, is transferred and the case is transferred to another magistrate for trial, but before any proceedings are taken in his Court, the former magistrate is reposted to the original place and the case is retransferred to his file, the accused have no right under the

——S. 350 (1), Proviso (a)—*Applicability—Enquiry preliminary to commitment to Sessions.*

Where a Magistrate after examining some witnesses in an enquiry preliminary to commitment to the Court

the Magistrate must be deemed to have directed a

de novo trial (including inquiry). In such a case failure to examine the witnesses in chief vitiates the trial.

n such a ing the *ogi, J.*)

T 309= A I R 1938 Nag 493.

—S. 350 (1) (a)—*Contravention of—When vitiate*

contravention of the provisions of S. 350 (1) (*a*) will vitiate the trial only when there is a refusal on the

——S. 350 (1) (a)—De novo *trial—Prosecution not relying and not wishing to produce witness, examined before—Accused, if can insist on their production.*

S. 350 (1) (*a*) does not require that even a witness on whom the prosecution does not rely and whom it does

RAM

1938 O A. 658 = A.I R. 1938 Oudh 247.

——S. 350 (1), Prov (a)—*Scope and applicability of—Decision of second magistrate to resummon witnesses—Accused if can insist that there shall be no* de novo

50 (1), Cr. P. Code, has no the new magistrate decides to recommence the inquiry proviso only gives the accused a right at

of Magistrate—Demand for re-summoning and re hear-

CR. P. CODE (1898), S. 350.

ing of prosecution witnesses—Refusal—All witnesses recalled and cross-examined

Where after the prosec
examined and a charge fram
up the case, his refusal to a
accused for re summoning an
is not an irregularity which vitiates the trial. And when all the witnesses are recalled and further cross examined before the Magistrate who decides this case, th
cannot be said to be prejudiced by the refu
summon and re-hear the witnesses, and the
cannot be set aside on that ground. (*Lakshm.*

——S 350, Proviso (b)—*Scope—T*
Magistate after recording of prosecution
framing of charge—Subsequent re-transfer

the case. The refusal to re summon and re hear the witnesses examined by the same
only an irregularity which does not
dings in view of proviso (*b*) to S 35
the High Court or a superior Cour
unless the accused has been m
thereby. Where a Magistrate aft

witnes
irregu
EMPE

about his statement in cross case, recorded—Statem
cross-case not brought on record—Procedure, if
—If curable under S. 537

Where a witness's answer as to whether he
statement in a cross-case is alone recorded, but
of the statement in the cross-case is not brought on record, the procedure adopted is improper and irregular being in contravention of S 353, Cr P Code Where it cannot be said to have caused
can be cured by the application
TAQI MOHAMMAD *v.* MOHAM
178 I C 1
1938 O W N.
1938 A.W R (C C)

——S 356—Non compliance with—Record, if can be used as basis for prosecution for perjury *See* PENAL CODE, S 193 1938 A.M L J 17

——S 366 (3)—*Signing of judgment—*
its delivery

As soon as a Magistrate signs his ju

tents

It is the duty of the Appellate Court not merely to consider whether there are reasons for differing from the judgment of the trial Court, but to apply its mind afresh

CR. P. CODE (1898), S. 369.

to the evidence and to form its own conclusion and to

A I.R. 1938 Cal 522.

——Ss 367 and 424—*Appellate judgment—Contents*

superior Magistrate under S. 349. *See* CR. P. CODE, SS. 349 AND 367. 1938 O W N. 1051.

——S. 367—*Magistrate exculpating accused—Remarks to prejudice of accused—If justified.*

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adversely upon the conduct of witnesses, so also it may be his duty to comment adversely upon the conduct of accused persons even though he may not consider the

——S 367—*Remarks against person not accused or witness—Propriety.*

Though a Magistrate may have to consider facts in

A I R. 1938 Sind 103.

——Ss 369 and 259—*Order of discharge under S 259—If a judgment—S. 369 if applies to judgments whether legal or illegal—Wrong order under S.*
Proper remedy.

CR. P. CODE (1898), S. 369.

illegal. Where an order under S

of High Court

The High Court has no inhere
review a judgment in a criminal c
Code, will therefore not confer such a power on the

ment or fine under S. 395 (1), but he has no
take a bond under S 562 from the accused.
J.) THE KING *v* BA KYWAY.
176 I.C 224 = 39 Cr L J 707 (1) = 11 R
A.I.R. 1938 Rang 218

——S 397—*Applicability—Consecutive sentences of detention under Madras Schools Act—Legality.*

S 397 of the Cr P Code does not apply to sentences

(1938) M.W N. 352 = A I R 1938 Mad 613.

——S 401—*Order of remission—Effect.*

(*Stone, C. J., Gruer and Bose, JJ.*) YESHWANT DESHPANDE *v.* EMPEROR.
1938 N L.J. 423 = A I R 1938 Nag. 513 (F.B.)

——S 401—*Scope of power of Local Government.*

Per *Bose, J*—Executive Government has not got unfettered and unqualified freedom of action in the matter of suspension and remission of sentence. Its powers in this respect are in a sense derived from a statutory delegation of the Royal Prerogative of pardon; not co extensive with

CR. P. CODE (1898), S. 403.

the rights of the
His Majesty
as they are

Government, if can subsequently restore sentence.

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whole it is clear, that the
is to confer a 'power' to
e. (*Stone, C. J., Gruer and*
ESHWANT DESHPANDE *v.*
1938 N L J 423 =
A.I R. 1938 Nag 513 (F.B).

——S. 403—*Defamatory allegations against minor daughter affecting father—Acquittal of accused on ... Complaint by daughter—If barred.*

ma le to police by certain persons
ntaining defamatory allegations
minor daughter, both the father
file separate complaints, and the
equent acquittal of accused in father's
no bar to the complaint by the daughter, because the complaint by the father although on same facts could not either have been filed on behalf
without the
ANS KAUR
Lah 739.

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03, Cr. P.
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, be tried
conspiracy.
(*Costello, Jack and M. C. Ghose, JJ.*) PURNANANDA DAS GUPTA *v.* EMPEROR. **68 C.L J. 206.**

——S. 403—*Principle of section—Extension—Permissibility.*

S 403, Cr P. Code, requires that the Court of the first instance should have been competent to try the charge put forward at the second trial. The principles underlying the English Common Law pleas of *autrefois*

convict and *autrefois acquit* have been embodied so far as this country is concerned within the limits, however narrow they may be or have been stated to be, of the language of the Statute itself. It would be bewildering and, indeed, might result in great injustice to the community at large if Courts were to endeavour to stretch the language or extend the principles laid down in S. 403. (*Costello, Jack and M. C. Ghose, JJ.*) PURNANANDA DAS GUPTA *v.* EMPEROR.

68 C L J. 206.

——S 403—*Trial and conviction under S. 45 of Calcutta Police Act—Subsequent trial on same facts under S. 44 of that Act—If barred*

The trial and conviction of an accused with certain others under S. 45 of the Ca Act does not bar his subsequent trial on under S 44 of that Act The case really the second clause of S 403, Cr. P Code (*M C. Ghose, J.*) KALI CHARAN *v.* S. K BRAHMACHARI.

42 C W.N 1232

——S. 403 (1)—*Applicability—Trial and acquittal under Ss. 379 and 411, I. P Code—Subsequent trial on charge under sandalwood transit rules under Forest Act—If barred.*

In order that S 403 (1), Cr P. Code, may be successfully pleaded, S 236, Cr. P Code, must apply, and for

so or al of Code, the ffence under the latter Act is established on the facts, and when the only doubt is whether an offence under the Penal Code is established The fact that at the previous trial the accused might have been tried for both the offences under the Forest Act and under Ss 379 and

——S. 403 (1)—*Applicability—Two charges triable jointly but not falling under Ss. 236 and*

——S 403 (1) second part—*Applicability—Test.*

In deciding whether a subsequent trial comes under

—*Acquittal under S 211, I P Code—Subsequent trial under S 182, I P Code—If barred.*

Under S 403 (4), Cr P Code, the 'competency' of the Court to try an offence means not only the status or character of the former Court to try the offe which the accused is subsequently charged but cludes within its purview cases in which th though otherwise qualified to try the case have done so because certain conditions precedent for the exercise of its jurisdiction had not been fulfilled. Consequently the acquittal of the accused under S. 211,

I. P. Code, at a previous trial does not bar his subsequent trial on the same facts under S. 182, I. P. Code, if at the time of the previous trial there was no complaint in writing of the public servant concerned as required by S. 195, Cr. P. Code. (*Young, C. J. and Tek Chand, J.*) EMPEROR *v.* RAM RAKHA.

177 I C 894 = 39 Cr L J 960 = 40 P.L R. 501 = A I.R. 1938 Lah. 625.

——S. 403, Ill. (e)—*Accused tried by 2nd class magistrate under S. 323, I. P. Code and acquitted by him—Power of District Magistrate on revision to order his retrial under S. 324, I. P. Code.*

not been charged under that section, he ordered that he should be tried under it.

Held, that the case was fully covered by Ill. (*e*) to S. 403, Cr. P Code, and that the additional District Magistrate had no power to order that *X* should be retried under S 324, I. P. Code, as that charge could have been framed by the second class Magistrate. (*Addison, J.*) BHAG SINGH *v.* EMPEROR.

I L R (1938) Lah 127 = 177 I C 339 = 11 R.L. 298 = 39 Cr L J 870 = 40 P L R. 1036 = A.I.R 1938 Lah. 614.

——S. 413—*Costs of court fee awarded under S. 546 A—If form part of fine.*

The amount awarded as costs of the court-fees under S. 546 A, Cr. P. Code, ought not to be regarded as forming part of the fine for purposes of appeal (*Paterson, J*) ATUL CHANDRA MODAK *v.* EMPEROR.

42 C.W N. 760.

——S 417—*Acquittal—Interference by High Court—Failure to draw correct and clear inference from proved facts—If ground of interference.*

In a case in which the result depends upon the appre-

Where there is a reasonable doubt as to the guilt of the accused, the High Court will not interfere with an

upon evidence the lower appellate Court might have come to the conclusion that the accused was guilty, unless it is quite clear that the Judge or Magistrate whose judgment of acquittal is appealed against is

conviction. It is not a power lightly to be used and should be used only where there is no reasonable doubt upon the record as to the guilt of the accused.

J.C. and Lobo, J.) EMPEROR v. HAJI GHULAB SHAH. 32 S L R 689=174 I.C. 835=10 R S 269= 39 Cr.L J. 504=A I.R 1938 Sind 80

——S. 417—*Appeal against acquittal—Delay in filing—When excusable.*

An accused was convicted on one charge and acquitted on another charge. On appeal from his conviction, High Court suggested that proper conviction should have been on charge on which he was acquitted. Hence,

10 R R 437=A.I R. 1938 Rang. 109.

——S 417—*Appeal from acquittal—Findings of*

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the Court were satisfied that no offence was committed, it would undoubtedly exercise *suo motu* its powers under S. 439 (1), Cr. P. Code, and set aside the conviction (*Horwill, J.*) PUBLIC PROSECUTOR v. PANCHAK SHARAM. 177 I C 432=48 L W. 142= 11 R.M

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Powers of

In dealing with an appeal from an order of acquittal on a matter of fact, the High Court has full power to review at large the evidence upon which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. Such power is not limited to cases of obstinate blunder on the part of the lower Court and stupidity or perversity of conduct or mis ing in a clear miscarriage of justice In power, the High Court will always give and consideration to such matters as the views of the trial Court as to the credibility of presumption of innocence in favour right to the benefit of any doubt, and Appellate Court in disturbing a fin judge who had the advantage of see (*Davis, J.C. and Lobo, J.*) EMPERC... BAHAWAL 32 S L R 694=174 I.C 694= 39 Cr L.J. 462=10 R S 261=A I.R. 1938 Sind 67.

——Ss. 417 and 418—*Appeal from acquittal and appeal from conviction—Distinction—Considerations.*

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reasonable doubt, the accused must have the benefit of that doubt. An appellant from a judgment of conviction can always invoke the support of these principles. If he can show that the essential evidence against him is not sufficiently reliable, as the lower Court thought, or that all reasonable doubt as to his guilt is not removed thereby, he is bound to succeed on these principles. An appellant from a judgment of acquittal has on the contrary, to work in the face of these principles and

——S 417—*New plea—If open in appeal against acquittal.*

acquittal for nviction by An appeal ie liberty of in jeopardy,

——S 418 (1)—*Construction—'Where trial was by jury'—Meaning.*

Per *Biswas, J*—The words 'where trial was by jury in S. 418 (1), Cr. P. Code, are not so clear as to admi they must mean 'where the tria ese words are equally capable of neaning 'where the trial was *McNair and Biswas, JJ.*) GULUKE BEHARI PAKAL v. EMPEROR. I L R (1938) 1 Cal. 290=173 I C 65= 39 Cr.L J 161=10 R C. 441=66 C L J 225= 42 C W.N. 129=A I R 1938 Cal 51.

——Ss 420 and 421, Proviso—*Jail appeal—Right of appellant to be present in Court and to be heard.*

convicted person from jail; and the accused has no

——S. 421—*Dismissal of appeal after hearing appellant's pleader—Non-issue of notice to Crown—If a ground for revision.*

Where a Sessions Judge after hearing the appellant's pleader dismisses an appeal and writes a judgment and meeting the points raised, t issue notice to the Crown cannot omplaint because it was thought the Crown to reply. (*James, J.*)

CR. P. CODE (1898), S. 421.

SONU KURMI v. EMPEROR. 177 I.C. 697= 5 B R. 12=11 R P. 176=

——S. 421—*Duty of Court—Summa· appeal for default—Legality.*

A Court cannot dismiss an appeal su because the accused fails to prosecute h law requires that the dismissal of the

and Lobo, J.)

177 I C 346=39 Cr L J 890=11 R S 58= A.I R 1938 Sind 171.

——S. 421—*Summary dismissal of appeal—Order not showing that records were examined or evidence appreciated—Legality—Interference in revision.*

Where it does not appear from the order of the Sessions Judge dismissing an appeal summarily, that he examined the record of the case or that he tested the arguments on questions of fact by examination of the evidence actually given by the witnesses, the High Court will in revision set

(James and Mada.

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——S 421—*Summary dismissal after sending for record—Legality—Calling for record—Points argued—*

ing the same dismisses the appeal summarily, the Judge does not commit any illegality. But in all cases where a busy Sessions Judge sends for the record in a criminal appeal which is presented to him for admission, it is desirable that he should note in the order sheet the points for which he is sending for the record in order to satisfy himself as to the correctness of the submission made by the appellants before him It will be difficult, in many cases, if not in all, for a busy Sessions Judge to remember the submissions which were advanced by the appellants' advocate which had satisfied him to this extent that he was forced to send for the record. *(Manohar Lall, J)* BASDEO KOIRI v EMPEROR

172 I C 944=4 B R 204=1938 P W N 113= 39 Cr L J 254=10 R P 369= A I R 1938 Pat 12

——S 423—Alteration c S. 323, I. P. Code, and Legality—Power of appellat

Ss. 236, 237 AND 423 1938 O W N 740

——S 423—*Appeal against conviction—Duty of*

been a miscarriage of justice, the Appellate Court cannot allow the conviction to stand. The appellant is therefore to bring before the of the Appellate Court such matters as ma sorable doubt of his guilt having regard circumstances of the case. It is true that

CR P. CODE (1898), S 423.

hears and sees the witnesses and in many cases his

endent being come but other conclusion but that the accused was guilty of the offence charged against him. *(Roberts, C. J. and Sharpe, J.)* NGA KYAW HLA v. EMPEROR.

173 I.C. 94=39 Cr L J. 248=10 R R. 306= A I.R. 1938 Rang 45.

——S. 423—*Re trial—Failure of prosecution—Duty of Court*

When the prosecution has proceeded against the accused under a particular section of the Penal Code and eventually fails, a re-trial on another charge, even if the facts fall within any of cls (2) to (4) of S 403, Cr. P. Code, should not be ordered except where there is a and when the rm of impri in the inte PEROR. M.L.J. 126.

——S 423(1) (b)—*Applicability—Power to alter acquittal into conviction*

e finding, maintaining the sen. 423 (1) (b) (2) must be read as under S. 423 (1) (b) of altering a Court of revision enhancing t turn upon chance. Cl (b) of S 423 (1) does not apply to cases of acquittal, partial or total, but to cases of conviction, and Cl (a) applies to cases of acquittal, and if the appellate powers of the Court are to be exercised to convert an acquittal into a conviction, then they should be exercised on an appeal against an acquittal under S 423 (1) (a) and not on an appeal against a conviction under S. 423 (1) (b). *(Davis, J C. and Lobo, J.)* JADO RAHIM v EMPEROR.

178 I C 520=A.I R 1938 Sind 202.

——S 423 (1) (b)—*Conviction by magistrate under Ss. 363 and 498, I. P. Code—Sessions Judge on appeal finding accused guilty under S 498 only—Power to pass sentence.*

A Magistrate convicting the accused under Ss 363 and 498, Penal Code, sentenced them under S. 363 to

what sentence was to be passed

Held, that the Sessions Judge had jurisdiction under

Case failing for want of sufficient evidence.

CR. P. CODE (1898), S. 423.

insufficient to support a conviction, a re trial cannot be ordered simply to give the prosecution another chance of producing further and better evidence. (*B. K. Mukherjea and Biswas, JJ.*) TRIPURARI BHATTACHARJEE v EMPEROR. 175 I.C. 514 = 10 R.C. 797 = 39 Cr L J. 604 = 42 C.W N. 812 = A.I R. 1938 Cal 361.

——S. 423 (1)(b)—*Re-trial—Order for—Principles.*

Per *McNair, J.*—Where the evidence would not on any proper view of the case support a conviction it would be worse than useless to send back the case for a new trial (*McNair and Biswas, JJ.*) GOLOKE BEHARY TAKAL v EMPEROR.

——S.

accused ... Code—Power ... Court to alter conviction to one under S. ... Code

Where the trial Magistrate convicted ... under S. 353, I P. Code, for assaulting a cer... whom he thought to be a public servant, but the appellate Court finds that that person was assaulted but that

... 11 R R. 69 = 39 Cr.L J. 761 = A.I.R. 1938 Rang. 281

——S. 423 (b) (2)—*Powers of appellate Court—*

in revision especially evidence, (*Horwill,*

——S 423 (2)—*Trial by jury—Misdirection—What amounts to.*

Where a Judge sums up to the jury by stating the

——S. 424—Appellate judgment—Contents. *See* CR. P. CODE, SS. 367 AND 424. 173 I C. 672 = A I R. 1937 Pesh 88.

——S. 428—*Prosecution witnesses not cross-examined a trial—Jurisdiction of appellate Court to direct*

CR P. CODE (1898), S. 436.

ertify and

been cross- ...aving been being con-

victed prefers an appeal and wishes for this additional evidence to be brought before the Court, the appellate Court has jurisdiction under S. 428 to direct the Magis-

A.I R 1938 Cal. 781.

——Ss. 435 and 440—*Exercise of powers under S. 435—Discretion—Accused not surrendering to his bail bond—Right to be heard in revision.*

Where an accused after the confirmation of his con- ...emained at large ... the High Court ... its discretionary ... tions immediately

——Ss. 435 and 439—*Refusal to issue process*

declining to issue process to an accused, and the magistrate has not acted as he should under S 202, Cr P. Code, the High Court has jurisdiction to entertain a

J.) VENKATASUBBA PILLAI, *In re.* 177 I C. 957 = 48 L W 801 = 1938 M.W.N. 973 = 39 Cr.L J. 984 = A I R 1938 Mad. 879 = (1938) ...

——S. 436—*Discharge—Setting aside—Grounds—Misapprehension and misappreciation of evidence.*

It is both legal and proper for a Sessions Judge or a District Magistrate to set aside an order of discharge on the ground of misapprehension of evidence. It is

strictly speaking, legal for a Sessions Judge or a District Magistrate to do so on the ground of misappre

tion of witnesses—Order for further inquiry by Sessions Judge—Trial Court ordering inquiry and report by Subordinate Magistrate—Latter summoning accused—Trial and discharge—Legality—S. 529—Applicability.

An order by a superior Court to an inferior Court to hold a further inquiry into a complaint which has been dismissed under S. 203, Cr. P. Co
may be called a technical mean
re-consideration. In some cases

some papers, and without examining witnesses or holding an inquiry under S. 202, Cr P. Code, the Court to which the case is sent for further inquiry is competent to order an inquiry under S. 202 But the Magistrate who is asked to hold an inquiry and to report by a particular date has no jurisdiction to proceed to summon the accused and hold a trial. A complaint was referred to the police, and on receipt of the police report, the Sub Divisional Magistrate who had cognizance of it,

to the accused and proceeded to by the case He examined some witnesses, and on 29 6 1937 discharged the accused under S 253 (2) The Sub Divisional Magistrate before whom the matter came up on 2-7 1937, held that the discharge of the accused by Mr *O* was entirely without jurisdiction, and ignored it He ordered summons to be issued against the accused, and after their appearance, made over the case to a second class Magistrate who convicted the accused on 2 9-1937. An appeal therefrom to the first class Magistrate was dismissed It was contended in revision that the second trial and conviction were illegal as the order of discharge passed by Mr *O* was not set aside by a competent authority.

Held, that the Sub-Divisional Magistrate who was in charge of the complaint and to whom the case was sent by

the trial and discharge, and (4) that therefore the second trial and conviction were quite legal and within

inquiry under S 436 into the case of a person who has been improperly discharged is not bound to begin the inquiry afresh. Further inquiry does not mean merely an examination of witnesses, but a further consideration of the evidence. The inquiry re commences where it was let off at the time when the improper order of discharge

Mad. 742=(1938) 2 M L J. 222

——S 436—*Revision against dismissal under S. 203—Issuing of summons without notice to accused—Propriety of.*

Where in revision, against an order under S. 203, Cr P. Code, the Sessions Judge without issuing any notice on the accused persons, directed the issue of summons on the accused persons straight away and ordered the case to be heard by another Magistrate

Held, that the form of the learned Judge's order was left it to
enquiry
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summons
ig time over enquiry, he
(*Cunliffee and Hender-*
GYANENDRA CHAKRA
C 601=39 Cr L J 292=
A I R 1938 Cal 22.

——S 439

——S 439—*Acquittal — Interference—Grounds—*

——S. 439—*Acquittal—Revision against—Acquittal in appeal—Power of High Court to order rehearing of appeal.*

direct the rehearing of the appeal. (*Mosely, J.*) MA THAUNG *v.* NANDIVA. 1938 Rang L R. 121= 175 I C. 547=10 R R 511= 39 Cr L J. 623=A I.R. 1938 Rang. 193.

——S 439—*Acquittal—Revision against—Erroneous view of law.*

Revision of an order of acquittal may be allowed when the order of acquittal is based on an erroneous view of the law. (*Bhide, J.*) MT. HARBANS KAUR *v.* LAHARI RAM. A.I.R 1938 Lah 739.

——S. 439—*Acquittal—Revision against—Interference—Power of High Court.*

The High Court has power to interfere in revision with an appellate judgment of acquittal, and though that power should be sparingly exercised, it would be wrong to refuse to exercise it in cases where there has been a failure of justice by reason of the appellate court not having brought a judicial mind to bear upon the evidence. (*Bartley and Khundkar, JJ.*) SATISH-CHANDRA DAS *v.* CHINTA HARAN SAHA. 178 I C. 56=39 Cr L J. [illegible] 67 C L J. 571=

——S 439—Applicability—O[illegible] declaring person to be tout under S. 36, Legal Practitioners' Act—Revision—Jurisdiction of High Court *See* C. P. CODE, S. 115. 47 L W 578.

——S. 439—Applicability—Order of District [illegible] under S. 36, Legal Practitioners Act declaring [illegible] to be tout—Revision—Jurisdiction of High Court [illegible] C. P. CODE, S. 115. (1938) 2 M L [illegible]

——S 439—*Applicability—Order under S 476 B by Civil Court—Revision to High Court—Procedure governing—C. P. Code, S. 115—Applicability*

An application in revision from an order [illegible] S. 476 B. Cr. P. Code, by a Civil Court to the [illegible] Court should be heard and decided in accordance [illegible] the provisions of S 439, Cr. P. Code, and not S. 115, C. P. Code. The order in question is one made by a criminal Court or a Court exercising criminal power, and power to revise, such order arises under S 439, Cr. P Code, S. 115, C. P. Code, does not apply to such a case.

Broomfield, J. The common sense view is that proceedings relating to prosecutions for criminal offences alleged to have been committed in Court are proceedings of a criminal nature, whether the alleged offence [illegible]

Making of a complaint under S 195 (1) (*a*) is not a judicial act but is the act of a public se[illegible] no revision lies under S 439 from the [illegible] District Magistrate under S. 195 (5) [illegible] drawal of such complaint as it is not pass[illegible] Criminal Court. (*Almond, J C.*) BABA [illegible]

v. GURDITTA MAL. 174 I.C. 344=10 R. Pesh. 63= 39 Cr.L J. 445=A I.R. 1938 Pesh 9.

——S. 439—Discretion under—Interference with—[illegible] of appeal. *See* CR P. [illegible] 19 Pat.L T. 28

[illegible] *of sentence—Exercise of*

[illegible] ence should be sparingly [illegible] and sentences should be enhanced only in cases where the failure to enhance the sentence would lead to a serious miscarriage of justice. The mere fact that the High Court, had it been trying the case, might have imposed capital sentence is not a sufficient reason for enhancement. (*Young, C. J. and Abdul Rashid, J.*) UTTAM SINGH SOCHET SINGH *v.* EMPEROR. I.L R 1938 Lah 347= 174 I C. 949=10 R L 644= 39 Cr.L J. 502=A.I.R 1938 Lah 260.

——S. 439—*Enhancement of sentence—Murder—Sentence of transportation for life—Application for enhancement—Test to be applied—Interference—Grounds.*

Where an application is made to the High Court for enhancement of a sentence of transportation on a conviction for murder, the proper test to be applied is whether the only sentence which could be passed on the evidence is a sentence of death. There are many cases where Sessions Judges are too lenient in the exercise of the discretion vested in them by law, but the High Court [illegible]

[illegible] wife, made preparations to murder her, went to the house of a neighbour and borrowed from the latter a bill-hook with which he killed his wife in a most brutal manner [illegible] ounds of a terrible [illegible] me and remained [illegible] ssions Judge who [illegible] of murder, but awarded the lesser penalty of transportation for life.

Held, that the only possible sentence which a Court [illegible]

——S 439—*Enhancement of sentence— Power of High Court—Exercise of—Practice.*

The power to enhance sentences should be sparingly exercised by the High Court and sentences should be enhanced only in cases where the failure to enhance the sentence would lead to a serious miscarriage of justice. The mere fact that the High Court, had it been trying the case might have imposed the capital sentence, is not a sufficient reason for enhancement. (*Young, C J. and Abdul Rashid, J.*) UTTAM SINGH *v.* EMPEROR.

but a blunder relating to the question as to whether [illegible]

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...93.

——S 439—*Interference—Refusal to take further evidence—Proceedings under S. 145—Claimant admittedly not in possession—Refusal to allow further evidence—If ground for interference.*

... Cr. P. Code. (*Pandrang Row, J.*) RANGA RAZU *v.* JAGANNATHA RAO.
177 I C. 584=11 R.M. ...
47 L W. 340=A ...

——S 439—*Interlocutory* ...
Power of High Court
The High Court has power ...

... Divisional Magistrate transferring calendar cases from ...

... Court. If it is a false and vexatious or ... the trial Court may, and should, take ... S. 250 Cr. P Code, when it acquits the a... (Cold*stream, J.*) PARMESSHARI DAYAL *v.* G...
4...

——S 439—*Powers of High Court—Alteration of finding.*

... TARAPADO SHASTRI *v* EMPEROR.
1938 A W R (H C) 467=1938 A Cr C 75=
1938 A L J 769

——S 439—Powers of High Court—Order of release on conviction under S. 411, I P Code—Power to alter conviction into one of ... of release, *See* CR. P. CODE ...

——S 439—*Quashing* ...
tice.

It is not the practice of the High Court, nor would it be proper for it ordinarily to alter or quash a charge unless it is clear that the complaint does not disclose the offence in the charge. (*Coldstream, J.*) GUL MOHAMMAD *v.* EMPEROR 39 P L R 957.

——S 439—*Quashing proceedings—Ground for—Groundless charge*

No doubt the High Court ought ... ordinarily by way of quashing a charge, ... the necessary materials are available ... appears to be *prima facie* groundless, it ... duty to interfere, without subjecting a ... unnecessary harassment of a trial. (*V*...

Rao, J.) RAMASWAMI MUDALIAR, *In re.*
47 L W. 136=1938 M W.N 217=
(1938) 1 M L J 810.

——S 439—*Scope—Discretion—Withdrawal of prosecution under S. 494—Revision—Interference—Prosecution ordered by Civil Court—Withdrawal on the ground of case being weak and the ground of costliness of trial—Propriety.*

The High Court will not and will ... interfere with the ...

... for ... reasons. If such a ...

1938 P.W.N 709=19 Pat L T. 796.

——S 439—*Scope—Order under S 145—Finding* ...

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——S. 439 (1)—*Powers of High Court—Reversal of finding and sentence and ordering retrial—Failure to ... 75, Penal Code.*

...is charged and convicted under S. 380, ...ough he had six prior convictions and ...e to charge him under S. 75, I. P. ...Court has powers under S. 439 (1) to ... and sentence and order retrial by a ...(*Y*)*orke, J.*) EMPEROR *v* MAHADEO
1938 O W N 1062=1938 O A 805=
178 I C 248=1938 A Cr C 131=
1938 A W R (C C) 92 (1)=1938 O L R 472=
A I R 1938 Oudh 261.

——S 439 (4)—*Applicability—Partial acquittal.*

...

RAHIM *v.* EMPEROR 178 I C 520=
A I R 1938 Sind 202.

——S. 440—Right of audience—Accused not surrendering to his bail bond. *See* CR. P CODE, SS 435 AND 440.
1938 A W R (H C) 690=
1938 A L J 1022.

——S 443—*Omission to record finding—If vitiates* ...

CR. P. CODE (1898), S. 443.

under the provisions of Ch. 33 and consequently has under S 446 (1) committed the case for trial to the Court of Session (*Mackney, J.*) M.I. MAMSA *v.* THE KING. 174 I C. 824 = 39 Cr L J. 470 = 10 R R 433 = A I.R. 1938 Rang 105.

——S. 443 (Ch. 33)—*Privilege under—If can be waived*

There is no reason why an accused led to continue to avail himself of a there is good reason to believe, his ir will render infructuous, if not harmful. Ch. 33 is a special procedure of which certain individuals at their own request are permitted to avail themselves There [illegible] iot waive a provided his the trial of (*Davis, J. C. and Havelivala, J.*) WISE *v.* EMPEROR. 176 I C. 705 = 11 R.S. 35 = 39 Cr L J. 789 = A I R. 1938 Sind 150.

——S. 446 (Ch 33)—*Proceedings under Ch 33 taken—Duty to commit.*

Once a Magistrate has taken proceedings under Ch. 33 his powers are curtailed. He cannot for instance under S 213 (2) cancel the charge, and if he does not discharge the accused under S. 209 or S 253 he must, as S. 446 of the Code directs, commit the accused for trial. (*Davis, J. C. and Havelivala, J*) WISE *v.* EMPEROR 176 I C 705 = 11 R 39 Cr L J 789 = A I.R. 1938 Si

——S 464—*Evidence of civil surgeon—If of prosecution—Opportunity to accused to rebut—Prosecution, if entitled to rebut evidence produced by accused.*

The evidence of a Civil Surgeon taken under S. 464 in order to decide whether an accused person is of un [illegible]

——S. 471—*Order handing over accused to relatives on their furnishing security.*

Where a Magistrate found the accused person guilty under S. 326 Penal Code, but acquitted him under S 84, Penal Code as the accused was incapable of understanding the nature of his act due to insanity and ordered him to be handed over to the care of his rela- [illegible]

THE KING [illegible]

——S. [illegible] *of application—Relevancy* [illegible]

[illegible] not promp [illegible]

CR. P. CODE (1898), S 476.

grudge, there is nothing in the Code warranting the proposition that action under S. 476 is only to be taken before the close of the proceedings in which the perjury is alleged to have been committed, or in strict continuation of them, or within any particular time after their termination. Nor is there justification for the view that [illegible] to be [illegible] N *v.* 698 = 429

——Ss 476 and 476 B—*Complaint by Court—Omission to appeal against order making complaint—Conviction on such complaint confirmed on appeal—Revision—Objection to legality of complaint—Maintainability.*

A person who has not appealed against an order resulting in a complaint under S 476 Cr. P. Code, being filed against him is not entitled to question or challenge the legality of the complaint in revision after he has been convicted and such conviction has been affirmed in appeal. (*Varma and Rowland JJ*) KUNJO CHAUDHARY *v.* EMPEROR 16 Pat 650 = 19 Pat L T 21 = 1938 P.W N. 41 = 173 I C. 742 = 4 B R 332 = 39 Cr L J. 353 = 10 R P 443 = A I.R 1938 Pat. 99.

——Ss. 476 and 195 (1) (c)—*Court, if can proceed against person not a party to the proceedings before it.*

S. 476, Cr P. Code, does not inhibit the classes of [illegible]

(*Stone, C J. and Clarke, J.*) ABDUL RAHIMAN *v.* MT PUSIA BAI. 1938 N.L J 348.

——S 476—*Duty of Court—Opportunity to party against whom enquiry is directed to cross examine witnesses.*

[illegible]

—If necessary.

A Court making a preliminary enquiry under S. 476, Cr. P. Code, need not issue notice to the accused. (*Skemp, J.*) NAZAR MOHAMMAD *v* HARNAM SINGH. I.L R (1938) Lah 188 = 40 P L R 959 = A.I R 1938 Lah 641.

——S. 476—*Preliminary enquiry—Prosecution for* [illegible] *direct-*

[illegible] Code is [illegible] fabrica- [illegible] iminary [illegible]

A.I.R. [illegible]

——S 476—[illegible] *for having made false entry*

[illegible] 476 read with S. 195 [illegible] ng fabricated evidence

by making a false entry, before action can be taken against such person, there must be some satisfactory evidence that the entry was fabricated for the purpose of being used in the proceedings; but actual user of documents in the proceedings is not necessary. (*Ameer Ali, J.*) GOPALDAS *v.* JNANENDRA.

A.I.R. 1938 Cal 677.

——S 476—*Prosecution under S. 193, I. P. Code—Considerations.*

Where an application under S 476 read with S. 195 is made to the High Court for taking person for having made contradictory ase, the High Court should, after mak

plaint was made and the accused cannot in revision against his con question validity of the complaint failed to avail himself of the ren and there to question its validit VITHOO *v* EMPEROR.

——Ss 476 and 476 B—*Refusal to make complaint—Appeal—Remand—Power of same Judge to make complaint*

Where a Subordinate Judge had previously refused to make a complaint, it does not follow that he is debarred

——S 476—*Scope—Defamatory statements in davit in course of judicial proceedings—Complain defamation—Sanction—Necessity.*

It cannot be said that where defamatory statem are made in an affidavit in the course of judicial pro dings a complaint of defamation cannot in any case be made without complaint of the Court. Where it matter of doubt whether the fact complained of con tutes one of the offences relating to the administra of justice as provided in S 193, Penal Code, or one its cognate sections, the complainant is not thereby debarred from placing his complaint under S. 500 of the Code. The complaint of the Court not being necessary in such a case, the filing of the complaint under S. 500 does not amount to an evasion of law (*Davis, J C. and Lobo. J*) KALUMAL MOTIRAM *v.* MULCHAND KIMATRAI.

176 I C 365 = 39 Cr L J 736 = 11 R S 17 = A.I R 1938 Sind 129

——S 476-A—*Application for making complaint dismissed in default by lower Court—Jurisdiction of superior Court to make complaint*

The word 'rejection' in S 476 A, includes rejection on the ground that did not appear to prosecute the appli therefore, an application for making a S. 476 was dismissed in default by the

CR. P. CODE (1898), S. 476.

superior Court has no jurisdiction to make a complaint. (*Coldstream, J.*) JAHAN KHAN *v* THE KING

176 I.C 116 = 39 Cr L J. 698 = 11 R L. 164 = 40 P.L R. 136 = A I.R. 1938 Lah 429.

——S. 476-A—Making of complaint—Power of Additional District Magistrate *See* CR. P. CODE, Ss. 195 (3) AND 476-A. **I L R. (1938) Lah. 188.**

——S. 476 B—*Appeal—Forum—Rejection of application under S 476 A by civil judge.*

An appeal against the rejection of an application District Court and als from the civil istrict Court (All) e valuation, yet by the District Court

Court with direction to lay com-

t hearing an appeal under S. 476-B le has the power to remand the case from appeal was made and direct it to lay the (*Grille, Ag C J*) VITHOO *v.* EMPEROR.

1938 N.L J 285 = A.I.R. 1938 Nag. 487.

——S 476 B *of—Person who has*

it is quite clear that a tion for action being of appeal under that M DAS AGARWAL *v.* A W R (H C) 747.

——S 476-B — Revision—Procedure — Order by Civil Court—Nature of—Application in revision—If one under S 439 or under S 115, C P. Code *See* CR. P. CODE, S. 439 **40 Bom L R 297 (F.B.).**

——S 476-B—*Scope—Application under Ss. 193—Magistrate declining to prosecute of District Magistrate to direct*

has been passed by the Mag

a superior executive officer acting in that capacity

——S 476 B—*Scope—Powers of appellate Court under—Remand for holding preliminary enquiry—Legality*

The powers of the appellate Court, mentioned in S. 476 B Cr P Code, are not exhaustive, and the Court can therefore exercise all the powers contemplated by the Cr P Code, except those which are expressly excluded. It has the power to remand a case to the lower Court for holding a preliminary inquiry for finding out if there are sufficient materials to file a complaint under S. 476. A complaint filed by the lower Court after

110 = A.I.R.

CR. P. CODE (1898), S. 480.

——S. 480—*Debt Conciliation Board—If a Court—Power to punish for contempt—Punjab Relief of Indebtedness Act, S. 16.*

A Debt Conciliation Board is a Court and its proceedings are judicial proceedings by virtue of S. 16 of the Punjab Relief of Indebtedness Act. The Board would, therefore, be acting within jurisdiction in passing an order of fine for contempt under S. 228, I P. Code, and

P. C

child—Reasons depriving woman of her right, if affect child

of

de

not prevent the child from aski g and

(*Davis, J C and Lobo, J.*) CHETIBAI

176 I C. 863=11 R S 42=39

A.I R

——S. 488—*Jurisdiction—Claim by*

band for maintenance—Existence of

Court awarding maintenance—If bars jurisdiction of Magistrate.

The mere existence of a decree of a Civil Court awarding maintenance to a wife against her husband does not oust the jurisdiction of a Magistrate, in a proper case, to make an order under S. 488, Cr. P. Code, in favour of the wife on an application by her under the section although the existence of such a decree is rele-

——S. 488—*Right to maintenance—Offer by husband to maintain wife.*

A husband lived away from his wife as he had

attempt on the part of the neighbours to bring about a compromise but it failed on account of the stubborn

and to main-

with him was

as a defence

maintenance.

judicial sepa-

ted her and

mstances, the

order for maintenance was proper. (*Mackney and Spargo, JJ.*) DE CRUZ v DE CRUZ.

173 I C 212=39 Cr L J. 287=10 R R. 322= A.I.R. 1938 Rang. 25

——S 488 (1) — *Construction — Application fo maintenance for wife and child—Power of Court t award sum in excess of Rs. 100 for both—Total sum awarded to both—If to be limited to Rs. 100.*

Where a wife makes an application for maintenance for herself and her daughter, the Court has power to award maintenance exceeding

that when a woman makes

and for her child she can or

for the maintenance of both

construe S. 488 (1), Cr. P. Code, wrongly. The Court has power to award Rs. 100, to each of the applicants. (*Leach, C.J. and Madhavan Nair, J.*) BULTEEL v.

CR. P CODE (1898), S. 488.

BULTEEL. I L R. 1938 Mad. 729=177 I.C 334=39 Cr.L J. 865=11 R M. 305=1938 M.W N. 424=47 L W. 594=A.I R 1938 Mad. 741=(1938) 1 M.L J. 821.

——S. 488 (3)—*Arrears—Power of Court to issue one warrant and impose cumulative sentence of imprisonment.*

The intention of the Legislature was to empower the

separate warrant in respect of each term of imprison-

In other words, where arrears accumulate, the Court can issue

impose a cumulative sentence of

m, C J., Allsop, Bajpai, Ganga

——S 488 (3)—*Order for imprisonment—Person sentenced already adjudged insolvent—Protection order under S. 31 of the Provincial Insolvency Act obtained—If avails as against the order of imprisonment of a Criminal Court.*

An order passed by a Magistrate under S. 488 (3), Cr. P. Code, for the imprisonment of a person who fails to pay a maintenance allowance, is a sentence of imprison-

An order for the protection already obtained by

person under S 31 of the Provincial Insolvency

rotecting him from 'arrest or detention', cannot

him from arrest in execution of a Criminal Court process or detention under a sentence of imprisonment passed by a Criminal Court. The 'arrest or detention' must mean arrest or detention in pursuance

of a Civil Court passed in execution of a

h Court A person who is sentenced to

default to imprisonment could not escape

under a protection order passed by the

ANGUR

39 C

——S

Arrears of maintenance—Right to recover.

Proviso to sub S. (3), S. 488 means that a person in whose favour an order for maintenance has been made must, to enable her to recover arrears of maintenance, apply to the Court to recover such arrears within one year from the date the arrears became due. Such person cannot allow arrears to accumulate indefinitely and

Evidence of—Agreement to pay half the salary to wife as maintenance.

An agreement by the husband to pay half of his

intenance is not by

ent to live apart.

F. TEASDALE

=66 C L J. 567=

A.I R. 1938 Cal 623.

——S. 488 (4)—*'Sufficient reason'—What amounts to.*

CR. P. CODE (1898), S. 488.

not sufficient reason for refusing maintenance to a wife. Living in adultery need not be in the house of the adulteror or paramour of the woman. The question to be considered is whether there has been continued adulterous conduct on the part of the wife shortly before or shortly after the application is made for

Continued adulterous conduct is what "living in adultery." (*Pandrang Row,*

PILLAI *v.* AMIRTHAMMAL.

I L R (1938) Mad 1100=17

39 Cr L J 951=48 L W. 273=1938 MW N 829= A I R. 1938 Mad 833=(1938) 2 M L J. 407.

—— S. 488 (4) and (5)—*Relative scope.*

—*Effect on arrears.*

An order under S 488 (5) Cr P Code cancelling

the maintenance of a w

the order and has no re

therefore, affect the

order (*Biswas J*)

I L R (19

39 Cr L J 357=66 C L J 571=19 R C 673= 42 C W N 64=A I R 1938 Cal. 144

——S 488 (8)—"*Residence*"—*Meaning of—If permanent residence.*

Where there is something more than a flying visit, where a man leaves his house and resides for some time

with his wife, it does not appear that the section should be so strictly construed as to deprive the woman, who often in these cases is helpless, of assistance from the Court which is most easily accessible to her It is not, however, possible in such cases to fix any arbitrary period of time, say, for instance, two months at Agra, six weeks at Bombay, one month at Karachi as a minimum to constitute residence for the purposes of S. 488. Each case will have to be dealt with on its merits. It could

CR. P. CODE (1898), S. 494.

manner from the manner in which she lived at the time the order of maintenance was passed does not necessarily constitute a change in her circumstances. Husband's keeping a mistress and getting children by her and contracting debts for litigation are not circumstances

ing proceedings taken in pursuance of a warrant issued without Jurisdiction

Nasirabad is outside British India and therefore a

——S 494—*Consent of Court for withdrawal—Recording of reasons—If essential.*

Reasons for giving permission to withdraw a case are, no doubt, desirable but are not essential. The code makes no such requirement

DATTATRAYA GOVIND-RAO PAKODE *v.* EMPEROR 10 R N. 167= 127 I C 130=39 Cr L J. 65=A I R. 1938 Nag 76.

——S. 494—*Discretion of Public Prosecutor—Withdrawal of prosecution.*

S. 494, Cr P Code, entrusts to the Public Prosecutor discretion to withdraw from the prosecution

cution authorities that case was weak and that it would be expensive—If sufficient grounds for withdrawal.

Where a Civil Court after a full inquiry the merits has ordered a prosecution, and has not appealed against the order it would be allowing an undesirable a prosecution were to be cut short the prosecuting authorities unless

CR. P. CODE (1898), S. 494.

very costly to the Government. The Government has got to face and does face the spending of considerable sums of money in maintaining justice. (*Gruer, J.*) SATWARAO *v.* KANBARAO BHAGORAO.

174 I C 510 = 10 R N. 403 = 39 Cr L.J 458 = 1938 N.L J 12 = A I.R. 1938 Nag 334.

——S. 494—*Reasons for withdrawal—Duty of Court to record.*

S. 494, Cr. P. Code, does not prescribe for the withdrawal of a prosecution should

39 Cr.L J. 458 = 1938 N.L J. 12 = A.I.R. 1938 Nag 334

——S 494—Scope an

between Ss. 337 and 494.

AND 494.

——S 495—*Applicatio*

tion—Power of Circle Inspector to present.

It is clear from S 495, Cr. P. Code, that an officer of the Police not below a certain rank Government is to prescribe, is entit prosecution, and is therefore, by

application. PAKODE *v.* EMPEROR. 10 R N 10? = 172 I C 130 = 39 Cr L J. 65 = A I R. 1938 Nag 76.

——S 498—*Appeal to Privy Council—Grant of bail — Power of High Court.*

——S. 498—*Commitment on serious charge—Grant of bail—Power of High Court.*

Where after an exhaustive enquiry the accused has been committed by a competent Magistrate on grave and serious charges relating to n

High Court should not light

(*Blacker, J.*) MOHI UD DIN

PEROR. 40 P L R 716 =

——S. 498—*Petition for b*

Sessions Judge having concurrent jurisdiction—Sessions

CR. P. CODE (1898), S. 510.

no bar to the High Court entertaining the petition direct if there are peculiar circumstances in the case which take it out of the ordinary, as where the High Court had on a *previous occasion made adverse remarks* on the behaviour of the accused when the matter came before it during the pendency of the committal proceedings and the existence of those remarks is likely to

)—*Scope—If overrides inherent powers of —Direction to produce accused in High ny other Court as may be directed—Vali to produce as directed—Forfeiture*

The provisions of S. 499 are not exhaustive and do not override the inherent powers of the High Court in restrictions on the sing conditions on irregularity in the es shall be respon- person on bail in the High Court and for his subsequent production in the Court of the District Magistrate of the District

of the High Court. (*Grille, J.*) ADKOO UMRAO KALAR *v.* EMPEROR A.I.R. 1938 Nag. 420.

——Ss. 500 and 514—*Accused released under S. 500 —Power of Court to restrict his movements—Order that accused should be kept in an Ashram—Surety, if bound by terms of bond.*

and this being so, the surety is not bound by the terms of his bond. (

v. EMPEROR.

1938 O A

——S 510—*Chemical Examiner's report—Proof of.*

Where all that is on the record of a case is a little scrap of paper on which it is written in somebody's

the production of a report by the Chemical Examiner

CR. P. CODE (1898), S. 512.

in place of the Chemical Examiner's own personal appearance in Court are special provisions of the Code and must be strictly adhered to. (*Blacker, J.*) PEARY LAL *v.* EMPEROR. **176 I C. 225 (1)= 11 R.L. 167 (1)=39 Cr.L.J. 714=40 P L R. 788= A.I R. 1938 Lah. 496.**

——**S 512**—*Scope—Evidence taken under—Admissibility—Conditions—Onus of proof.*

on such date and so his bond was forfeited. It was found that the bond had not been executed as such by the accused as the bond was nowhere signed by him Moreover, the order sheet also did not show that the accused had knowledge of the change of venue of the Court.

Held, that the bond could not be forfeited under such circumstances (*Biswas, J*) IMARAT MALLICK *v.* EMPEROR. **174 I C 823=39 Cr L J. 473= 10 R C 728=**

——**S. 514**—*Liability of su two sureties for total sum of . payment of Rs* 1,500 *by each—L*

Where a bond is executed by tv severally undertaking to be liab Rs. 2,000, an order requiring each of them to pay Rs 1,500 on forfeiture of the bond is than the total amount of the bond from them together (*Gruer, J*) PEROR **178 I C 207= A I P**

——**S 514**—*Proceedings under—Bond by sureties for party—Death of party—Enquiry into breach of conditions—Plea that main case* subjudice—*Sustainability.*

Where proceedings under S 514, Cr P. Code, are started on the ground that a bond has been forfeited, it is no answer to such proceedings to plead that the proceedings in respect of which the bond was executed are still *subjudice* when the person for whom the executants of the bond are sureties is dead The death of that party terminates the proceedings so far that party is concerned, and there is no obstacle to an enquiry as whether that person had broken the conditions of the bond (*Gruer, J*) NAMDEO *v* EMPEROR **178 I C 207=1938 N L J 79= A.I R. 1938 Nag 275**

——**S 514**—*Security to keep the of offence under S. 323, I. P Code— ture of bond.*

Where a person who has furnished the peace commits an offence under S 323, I P Code, his bond is liable to be forfeited, for the commission of an offence under S 323, I. P Code, is a breach of the

CR. P. CODE (1898), S. 520.

peace. (*Hamilton, J*) ABDUS SATTAR *v.* EMPEROR. **176 I.C. 918=39 Cr L J. 831=11 R O. 7= 1938 A Cr.C. 55=1938 O L R. 355= 1938 O.A. 566=1938 O W.N. 676= A.I R. 1938 Oudh 195.**

——**S. 514 (1)**—*Compliance of—Proof of forfeiture of bond—Grounds of—Omission to record—If illegality.*

S. 514, Cr. P. Code says that the Magistrate shall before calling bound by the ie grounds is, y S. 537, Cr. P. at such grounds

prosecution—Witnesses not examined—Order regarding exhibits—Power of Court to pass.

Where the accused and the exhibits are sent up by the police to the Magistrate and he takes action under

——**S 517**—*Acquittal of accused— Forfeiture of*

confisca- appears for the efore, an accused is acquitted by the Magistrate, an order forfeiting to Government property seized from his possession on the ground that it "has not been satisfactorily accounted for and is tainted with suspicion", is bad. (*Grille and Bose, JJ*) SHALIGRAM *v.* EMPEROR. **10 R N. 185= 172 I C. 213=39 Cr L.J. 105= A.I.R. 1938 Nag 52.**

——**S 517**—*Title doubtful—Proper order*

When title is doubtful, the proper order under S. 517, Cr. P Code, ordinarily should be an order for return to the person from whom the property was attached. (*Weston*) GOPI *v* EMPEROR. **1937 A M L J 141.**

——**S. 520**—*'Court of appeal'—Additional Sessions Judge*

Where an Additional District Magistrate had passed an of acquittal in appeal, would lie only to the ons Court, the latter the order of disposal. **1937 A.M.L.J 141**

——**S. 520**—*Powers of Sessions Court.*

S. 520, Cr. P. Code, gives the Sessions Court power to modify, alter or annul an order passed under S. 517

CR. P. CODE (1898), S. 522.

by a Subordinate Magistrate. (*Baguley, J.*) MAUNG PO TU *v.* THE KING. 1938 Rang.L R. 143=176 I.C. 451=11 R.R. 67=39 Cr.L J. 763=A.I.R. 1938 Rang. 278

——S. 522—*Accused entering possession of complainant's house by breaking lock—Order of restoration of possession—Power of Court to pass.*

Where the accused persons broke open the lock of the house of the complainant in his absence and entered into possession thereof and when the complainant reached

Lah 454, Diss. from. (*Skemp, J.*) RODA *v.* AUTAR SINGH. 40 P.L R. 923=A.I.R 1938 Lah. 839.

——S 522—*Order by appellate Court—Time limit.*

A Court of appeal can pass an order under S. 522,

little or no practical use, as a case will not usually reach the appellate Court before the expiry of the month. (*Gruer, J.*) NAMDEO *v.* EMPEROR I.L.R 1938 Nag 454=173 I.C. 620=10 R N 314=39 Cr.L J 342=A I.R

——S 522 (3)—*Order under—Limit*

S. 522 (3), Cr. P. Code, imposes no period of limitation on a Court of appeal or revision. Such a Court can, therefore, pass an order restoring the property to the complainant even after the expiry of one month from the original conviction. (*Skemp, J.*) RODA *v.* AUTAR SINGH 40 P.L R. 923=A.I.R. 1938 Lah 839.

——S. 526—*Application for transfer—Proof of facts—Necessity*

IN *v.* EMPEROR. A.I R 1938 Rang. 454

——S 526—*District Magistrate,* *without notice*

There is no provision in the Code of C dure that a District Magistrate may not

CR. P. CODE (1898), S. 526.

face of the questions themselves, disallowed or allowed as the case may be, the only possible inference must be that they have been allowed or disallowed for some ulterior and improper reason. (*Braund, J.*) U SAW *v.* THE KING. A.I R. 1938 Rang. 456.

——S. 526—*Grounds for transfer—Apprehension—Explanation of magistrate—What should contain—Putting up with the complainant's friend—Reasonable apprehension.*

a magistrate in nsfer, and an exre satisfactory, if 'away deny them, 'ments that 'what ace' and so on. e magistrate was sed the complaint, and it is not denied, then the only question is whether or not the petitioner has reasonable apprehension of prejudice from such conduct. It was held that such conduct was undesirable and that the case should be transferred. (*Dhavle, J.*) BINDESHWARI MISSIR *v.* 175 I C. 49=4 R B 519 (1)= 71=39 Cr L.J. 517=1938 P.W N. 518=A.I R. 1938 Pat. 376.

—*Ground for transfer—Communal bias* —*Reasonable apprehension.*

A Magistrate is not barred from trying cases between members of two communities by reason of his belonging to one of them. But when a Magistrate finds himself is incumbent upon him to discretion in handling the as been guilty of errors of hich has been against the interests of the party belonging to the community to which he does not belong, it is impossible to escape the conclusion that that party has a reasonable apprehension that it is not likely to get an impartial trial. The case in such circumstances should be transferred from the file of the Magistrate, although there is actually no communal bias in his mind (*Blacker, J.*) LAL SINGH *v.* EMPEROR 40 P.L.R 505=177 I C. 507=39 Cr L J. 888=11 R L. 333 (1)=A.I R 1938 Lah 576.

and 528—*Ground for transfer—Com-*

Ordinarily, the mere fact that a case is between

everybody concerned to transfer the case. AMBA PARSHAD *v* IMAM ALI. 178 I.C 507=A.I.R. 1938 Lah. 706

6—*Grounds for transfer—Hostility—Pre-* *against Magis-*

was trying a case le an application accused had prent on the Magissioner, he might nt which would

as a ground for THE KING, 1938 Rang. 456.

—*Irregular pro-*

CR. P CODE (1898), S. 526.

——**S 526**—*Grounds for transfer—Magistrate hearing case at untimely and inconvenient hours and refusing adjournment.*

Held, that the orders created a reasonable apprehension in the minds of the accused that they would not get a fair and impa
Magistrate and hence
for the transfer of t
LAL BAHADUR RAUT

4 B.R. 533=10 B.P. 581=39 Cr.L J. 527= A I R. 1938 Pat 238.

——**S 526**—*Ground for transfer—Magistrate having interview with one of the parties.*

The fact that the Magistrate had an interview with one of the parties to the case privately and out of Court and heard from that party his version of the facts, is sufficient to disqualify him
case, and the case should,
another Court. (*Blacke*
EMPEROR. 40 P
10 R L

A I.R 1938 Lah 346

——**S 526**—*Ground for transfer—Magistrate, tenant of father of accused*

The fact that the Magistrate lives in the bungalow which is owned by the father of one of the accused persons is no ground for transfer, when the landlord lives in another town and the Magistrate took the house on rent long before the institution of the case in his

display of unnecessary haste in trial of case.

Where the Magistrate has displayed fa
haste in the trial of the case and has wrong
give the accused opportunity to engage
assistance as he thought proper, the con

39 Cr L.J. 576=10 R.R 483= A I.R. 1938 Rang 198.

——**S. 526**—*Grounds for transfer—Reasonable ap*

CR. P. CODE (1898), S 526.

——**S 526**—*Grounds for transfer—Trial by magistrate who had exercised powers under S 127 (1), Cr. P. Code—Trial of offence in respect of such disturbance.*

As a general rule the mere fact that a Mag strate has,
e powers
relation
urbances
gnizance
t distur-
er hand,
e of his
were to
acquire any particular knowledge by his own observation or otherwise which might, in the hearing of any

Sharpe, JJ.) MAUNG BA CHEIN *v.* EMPEROR.

A I.R 1938 Rang 454.

——**S. 526**—Magistrate issuing search warrant—If can try case. *See* PUBLIC GAMBLING ACT, S. 5.

171 I C. 1007.

——**Ss 526 and 528**—*Order of transfer—When operates—Trial and conviction subsequent to order of*
id—S 531—

om one Court
it is passed
act after the
order is passed—even though a copy of the order of transfer has not been received by it—acts without jurisdiction. But it does not follow that the order so passed without jurisdiction is void S 531 of the Cr. P. Code would apply to the case and the trial and conviction of an accused cannot, in the absence of a miscarriage of justice, be set aside on the ground that the trial was

A.I.R 1938 Rang. 442.

——**S 526** — *Reasonable apprehension in mind of accused that he would not get fair trial—Transfer.*

CR. P. CODE (1898), S. 526

there is no reason to doubt that the Magistrate will do his best to come to a correct conclusion if he continues the trial, as it is necessary not only that justice should be done but that it should appear that justice is being done. (*Mohamad Noor, J.*) LAL BAHADUR RAUT *v.* EMPEROR. **175 I C. 110 = 4 B R. 533 = 10 R.P. 581 = 39 Cr.L.J. 527 = A I.R. 1938 Pat. 238.**

——**S 526**—*Refusal to permit questions being put to witness—If ground for transfer.*

circumstances and may even mean the rejection of the version. The question in any case would be perfectly relevant and legitimate. However, the rejection of such question cannot be a ground for transfer. (*Mohamad Noor, J.*) LAL BAHADUR RAUT *v* EMPEROR. **175 I C 110 = 4 B R 533 = 10 R.P 581 = 39 Cr L J 527 = A.I.R 1938 Pat. 238.**

——**S. 526**—*Right to apply for transfer—Complainant in cognisable case.*

The complainant in a cognisable case is, no doubt

Rashid, J.) EMPEROR *v.* SHANA. **40 P.L R. 468 = 177 I C. 187 = 11 R L 274 = 39 Cr L J** [illegible] **A.I.R. 1938** [illegible]

——**S. 526**—*Transfer—Who can apply*

——**S. 526 (1)**—*Procedure—C*[illegible] *and 454, I. P. Code—Proper sent*[illegible] *trate—Release on probation—If* [illegible] *imprisonment—Necessity for.*

treating the accused more leniently than i[illegible] S. 562 (1) An accused convicted under [illegible] I. P Code, may in a proper case be releas[illegible] tion of good conduct. If he is convicted [illegible] and 457, I. P. Code, a sentence of im[illegible] obligatory. Where, therefore, in case [illegible] under Ss. 380 and 454, the Magistrate con[illegible]

CR. P. CODE (1898), S. 528.

BA SAKHOBA. **40 Bom.L.R. 927 = 178 I C. 330 = A.I.R. 1938 Bom. 463.**

——**S. 526 (8)**—*Adjournment granted on condition that applicant should within reasonable time apply to High Court—Application wrongly but in good faith made to local Court—If fatal.*

is g[illegible] wit[illegible] tra[illegible]

[illegible] the first time, be [illegible] *and Lobo, J.*) [illegible] **10 R S 258 =** [illegible] **1938 Sind 66.**

——**S. 526 (8)**—*Scope — Non-compliance—Refusal to accept application and to adjourn case—If ground for transfer.*

Refusal to accept an application under S. 526 (8), Cr. P. Code, and to stay the case in obedience to the mandatory provisions of the section would justify an apprehension in the mind of the applicant that he would not receive a fair trial, and is a ground for transfer. The fact that the application is defective or not in proper form is no ground for declining to adjourn the [illegible]se. (*Bose, J.*) JANKI PRASAD *v.* MST. SUKH **1938 N L J 36.**

——**S. 526 (8) and (9)**—Scope—If restrict powers of [illegible]s to pass order for costs under S. 344. *See* CR. P. CODE, S 344. **1937 A.W.R. 1226**

[illegible] elves. And as [illegible] (*Blacker, J.*) **175 I.C. 545 =** [illegible] **1938 Lah. 337.**

[illegible] *alcation under*

[illegible], Cr. P. Code, a Magis[illegible] [illegible]sts. (*Lakshmana Rao,* [illegible]E OF KURNOOL *v.* **48 L W. 381 = A.I.R. 1938 Mad 909 = (1938) 2 M.L J. 531 (1).**

——S. 528—Transfer under—Inquiry under S. 202, if can be ordered in such a case. *See* CR. P. CODE, S. 202—SCOPE. **A.I.R 1938 Nag 433.**

——S 529—Applicability—"Good faith"—Order by superior Court to inferior Court to make inquiry into complaint and to report by fixed date—Latter summoning accused and proceeding with *trial—Discharge—* Legality. *See* CR P. CODE, S 436 **19 Pat L T. 336.**

——**S 529 (f)** — *Curability under—Conditions—Second officer transfering to himself case taken cognisance of by the S. D. O during the latter's absence—Trial by Second Officer—Legality—Cr. P. Code, Ss.* 13 (3) *and* 192.

Where there was a standing order when the S. D. O. is away from the Secord Officer is to carry on the work at the headquarters and where in a Second Officer during an absence of the S. D. O. transferred to his own file, a case cognizance of by the S. D. O, and it himself, on a plea that there has been no transfer and as such the proceedings were *ultra v*

Held, that the Second Officer must be consid have been appointed as S. D O to

ho were not who had case was *J.*) RAMKRISHNA SINHA *v.* EMPEROR **42 C W N 246= 174 I C. 513=39 Cr L J 417= 10 R.C. 693=A I.R 1938 Cal 195**

——S 530—Scope—Demand for re summoning and re hearing witnesses under S. 350—Non compliance—Trial—If vitiated. *See* CR P. CODE, SS 350, PROVISO (2) AND 530 **(1938) 2 M L J. 41**

——S 531—*Applicability—Order of commitment*

An order of commitment within the meaning of S 5 certainly made in the course enquiry preliminary to the even if the committing Magistrate had no territorial jurisdiction at the time of the commitment and on that account had no jurisdiction to make the commitment, such want of jurisdiction would not be a good ground for setting aside the order of commitment, when it has not occasioned any failure of justice (*Jack and Khundkar, JJ*) EMPEROR *v.* SAYER UDDIN PRAMANIK **I L R. (1938) 2 Cal 357.**

——S 531—Applicability—Trial and conviction subsequent to order transferring case to another Court—If void or if cured by Section. *See* CR. P. CODE, SS 526 AND 528 **1938 M W.N 830**

——Ss 533 and 164—*Defects in recording confession—If can be condoned*

Omissions and irregularities in recording confessions under S. 164 are condoned by S 533 provided they do not prejudice the accused. (*Almond, J C and Mir Ahmad, A.J.C*) KISHAN CHAND *v.* EMPEROR **174 I C 449=10 R Pesh. 64=39 Cr.L J 448= A.I.R 1938 Pesh 5.**

——S. 533—*Evidence of Magistrate recording confession—When admissible*

S. 533 clearly authorises the taking of the evidence of the Magistrate recording the confession, where there is any error in the form of the recording or not recording questions or in the form of the certificate, for it cannot be said that these are matters which injured the accused as to his defence on the merits. (*Bennet and Verma, JJ.*) LAL SINGH *v.* EMPEROR. **I.L.R 1938 All 875=1938 A.W R. (H C) 642= 1938 A L J. 943=1938 A Cr C. 107= 1938 A L R 881=A I R. 1938 All. 62.**

——Ss 536 and 418—*Appeal—Case triable by assessors tried by jury—Appeal, if lies on facts.*

Where an offence triable with assessors is tried with of the accused and an question whether an

Held, Per *McNair, J.* (*Biswas, J.*, contra).—So

the aid of assesdeprive him of would otherwise S. 536 does not is governed *and Biswas,* ROR. Cr L J. 161= 38 Cal 51= C.W.N. 129.

——S 537—Admission of evidence—Admission of documents during cross-examination of prosecution witnesses—Curability *See* CR P CODE, SS 252, 256 AND 537. **1938 A W.R. (H C.) 638.**

——S. 537—Applicability—Presentation of complaint under S 22 of Cattle Trespass Act to wrong Court—If curable. *See* CATTLE TRESPASS ACT, SS. 20 AND 122. **175 I C. 662**

——S 537 — *Erroneous statement of charge—If curable.*

There is a distinction between a misjoinder of charge and an erroneous statement of a charge otherwise lawror in charge can be cured under S. 537. *and Lobo, J*) EMPEROR *v* BALUMAL **177 I C 346=39 Cr L J 890= 11 R S. 58=A I.R 1938 Sind 171.**

——S 537—Essentials of vitiation—Summons not giving all particulars required by S 15 of U. P Prevention of Adulteration Act—Cure of. *See* U. P. PREVENTION OF ADULTERATION ACT, S 15 **1938 A.L J 497.**

——S 537—*Examination of complainant—Failure to make—If curable.*

The omission to record the statement of a complainant could at best be considered to be an irregularity which cannot vitiate the trial. Such an irregularity can be cured under S. 537 of the Cr. P. Code. (*Kichlu and Janki Nath Wazir, JJ.*) ABDUL AZIZ *v.* STATE **40 P.L.R. J & K. 1.**

——S. 537—Procedure in contravention of S. 353—If curable *See* CR P. CODE, Ss. 353 AND 537. **1938 O W.N. 1064.**

——S 537—*Scope—Misjoinder of charges—If cured*

It makes no difference whether the acts charged are forty-one, fourteen or four, provided they exceed the statutory number and are not covered by the provisions of S. 234, Cr. P. Code, or the following provision

CR. P. CODE (1898), S. 537.

relating to the joinder of charges; the misjoinder of charges is a vital defect in the trial which cannot be cured by the provisions of S. 537, Cr. P. Code. (*Davis, J.C. and Havelivala, J.*) CHUHARMAL NIRMALDAS v. EMPEROR. 177 I.C 280=39 Cr.L J. 881=11 R.S. 53=A.I R 1938 Sind 164.

——S. 537—Scope—Omission to comply with S. 342—If cured. *See* CR. P. CODE, S. 342. **A.I.R. 1938 Sind 97.**

——S. 537—Scope—Omission to give reasons for discharge of some accused at time of discharge—Effect—Irregularity—If cured. *See* CR. P. CODE, S. 253. **1938 M.W.N. 38=(1938) 1 M.L J. 110.**

——S. 537—*Scope of—Transfer* [illegible] *who had not himself taken cognizan*[illegible] *curable under S. 537.*

S. 537 as its wording shows, deals [illegible] larities committed by Courts of competent jurisdiction. Where a Magistrate transfers a case which he has not himself [illegible] which [illegible] *wat, J.* [illegible]

compla[illegible]

Alth[illegible] Act to apply the provisions of S. 537 to cases of want of sanction required under S 195, Cr. P. Code, an irregularity in a complaint made by one Court to another is curable under Sub-S. (*a*), since a complaint made by [illegible] de, in [illegible] rivate [illegible] EROR. [illegible] 487.

——S. 539-B—*Local inspection—Absence of memo*-[illegible]

vitiated.

[illegible]

——S. 539-B—*Scope—Local investigation—Limits to powers of Court—Charge of ch*[illegible] *vertisement—Offer by accused* [illegible] *Court to test truth of advertise*[illegible] *—If justified.*

S. 539 B, Cr. P. Code, no do[illegible] to make a local investigation, b[illegible] plate a procedure by which the judge or magistrate has to all intents and purposes to put himself in the position of a witness in the case A magistrate is therefore perfectly justified in refusing to accept an offer made by the accused, charged with the offence of cheating in respect of an advertisement inserted by him, to make a demonstration of a physical feat in Court, in order to test

CR. P. CODE (1898), S. 562.

whether his advertisement was true or false. (*Fazl Ali and Rowland, JJ.*) AKHIL KISHORE RAM v. EMPEROR. **174 I.C. 635=19 Pat L.T. 375=4 B R. 466=39 Cr.L J. 442=10 R.P. 541=1938 P.W.N. 93=A.I R. 1938 Pat 185.**

——S. 540—Failure to examine accused subsequent to examination of Court witnesses—Trial if vitiated. *See* CR. P. CODE, SS. 342 AND 540. **1938 O W.N. 743.**

——S. 540-A—*Requirements of—Non-compliance with as regards one of several accused in a joint trial—Effect.*

Normally a trial in the absence of the accused is a [illegible]

joint trial of several accused, the presence of one alone is dispensed with under S. 540-A, Cr. P. Code, without [illegible] fulfilled, the trial [illegible] rds that particu- [illegible] for a joint trial [illegible] and indivisible. [illegible] OKHAR DAS v. [illegible] =10 R.L 562= [illegible] 1938 Lah. 218.

[illegible] *Punjab Govern*- [illegible] *case—Expenses of Defence witnesses—If to be paid by Government*

The only fair interpretation of R. 1, Chap. 9, Vol 3 framed by the Punjab Government which makes no distinction between prosecution witnesses and defence witnesses is that Government by exercising its power of restriction, which it is authorized to exercise by S. 544, Cr. P. Code, has limited the cases in which Magistrates may pay the expenses of witnesses to those mentioned in the rule. If the rule framed by the High Court lays [illegible]

[illegible] *under S. 435, I. P. Code—Accused over 21 years.*

[illegible] with 14 years rigorous imprisonment, an order [illegible] S. 562, Cr. P. Code, cannot be made. (*Din Mohammad, J.*) JAWAND SINGH v. JAGAT SINGH. **40 P.L.R. 999.**

——S. 562 (1)—*Applicability—Conditions—Accused over 21 years—Offence punishable with more than seven year's imprisonment—Release on probation—Legality.*

CR P. CODE (1898), S. 562.

A Magistrate has no power to act under S. 562 (1), Cr. P. Code, in the case of an offence punishable with more than seven years' imprisonment and where the accused is more than 21 years old. (*Broomfield and Norman, JJ.*) EMPEROR *v.* YESHABA SAKHOBA.

1

——*S. 562 (1)*—

under S. 411, I. P. Code—Order of release after admonition—Legality—Revision—Power of High Court to alter conviction to one under S. 379, I. P. Code, and maintain order of release.

A person convicted under S.
be dealt with under S. 562 (1
the facts found are equally cor
session of stolen property, the
can alter the conviction into
Code, and maintain the order
would then be perfectly legal (*Manohar Lall, J.*)
EMPEROR *v.* BHOLA MIA. 18 Pat.L.T. 872.

CRIMINAL RULES OF PRACTICE (MAD) R. 85—*Scope and interpretation of.*

The whole spirit of R. 85 of the Criminal Rules of Practice, is that a Magistrate should not only satisfy himself that the contemplated confession is voluntary, but should ascertain the exact circumstances in which it is made and the extent to which the accused had relations with the police For such a purpose, a magistrate may ask such question as he thinks fit provided he re-

CRIMINAL TRIAL,

- Acquittal
- Appeal.
- Bail Bond
- Benefit of doubt.
- Case and counter case
- Committal to sessions
- Confession.
- Conviction
- Cross cases.
- Delay in prosecution.
- Duty of Court
- Duty of prosecution
- Duty of Subordinate Magistrates
- tive officers
- Evidence
- First information Report
- Inherent powers of Court.

CRIMINAL TRIAL.

- Jurisdiction.
- Misjoinder.
- Presumption of Innocence.
- Procedure.
- Proof of guilt.

—*Duty of Court to give reasons for conclusion.*

An appellate Court, before dismissing an appeal summarily, ought to give indications that it has actually
and
the
was
R
32=
366.

There can be no forfeiture of penalty in a bail bond except
to fine
been
ties,
ment

BHATTACHARJEE *v.* EMPEROR
4 B R 503=174 I C. 984=10 R.P. 566=39 Cr.L.J. 523=A I.R. 1938 Pat. 211.

——Benefit of doubt—Meaning of—Mistake as to weapons used by accused—Right to benefit of doubt. See CR. P. CODE S. 225 1937 M W.N 1331.

ourt—Charge under proving knowledge—

up his mind upon
d if there is any real
give the accused the
m guilty, even in
ect of which the
tting him of that
e burden lies on
the prosecution to prove the guilt of the accused. If in

necessary guilty intention is or is not present, and when

Held, that there was a reasonable doubt as to intention of the accused and the offence fell more under S. 304, Part 2, than under S. 302 or S (*Davis, J.C. and Lobo, A.J.C.*) GHU INAM BAKHSH *v.* EMPEROR.

174 I.C. 497=10 R.S. 254=39 Cr L J. 400=
A.I.R. 1938 Sind 63

——*Case and counter case—Prosecution evidence in one treated as defence evidence in the other—Legality—Propriety—Consent of Counsel—If can cure defect.*

Trials in criminal cases are governed by of Cr. P. Code and the procedure of tre. secution evidence in one case as defence other and *vice versa* is not warranted by of that Code. The procedure permissible

for the
J.) S

39 Cr L.J. 929=A.I.R. 1938 Oudh 249.

——*Case and counter case—Statements of witnesses who are accused in the counter case—If evidence.*

Parties should not be encouraged to resort to the Cri

mad, J.) BHAGWAN SWARUP *v.* CROWN.
40 P L.R. 967.

——*Committal to session—Offence of*

her be
JJ.)
832=
177 I.C. 647=11 R B. 111=
39 Cr.L J 928=A.I.R. 1938 Bom. 430

——*Confession—If to be accepted in entirety.*

There is no justification for the rule of law that in the absence of other evidence the whole of a given confession must be accepted as a statement of truth in its entirety. It is true that if an accused person makes a confession, the whole of that confession must be placed before the Court and is receivable in evidence. But

——*Confession—Duty of Court to take as a whole—*

s consideration, when of a confession or its se presumptions which evidence on record, on course of natural ttle evidence is e in themselves an accused in) JADO RAHIM 938 Sind 202.

Court—Confes ce—Value of— tatements from

nfession, parti- ded, the Court

it is Partic eviden

And when the only witness who proves the confession his statements from time to time on material bviously with some purpose, he cannot be re- s a reliable witness, and the confession cannot proved on the sole testimony of such a witness. fession in such a case must be ruled out and

——*Confession — Retracted — Retracted confession should not form basis of conviction, unless substantially corroborated by independent evidence.*

As a rule of prudence a retracted confession should

story as set forth in the confession is consistent, natural and plausible. (*Dhavle and Chatterjee, JJ.*) EMPEROR *v.* MANU CHIK. 175 I C. 716=4 B R 626=
39 Cr.L J. 635=11 R P. 11=
A.I.R. 1938 Pat. 290.

——Confession—Voluntary nature of—Question of fact. *See* EVIDENCE ACT, S. 24—SCOPE OF.
1938 M.W.N. 24 (2).

——Conviction—Basis of—Homicide—Decision as to—Facts to be taken into consideration—Intention—Relevancy. *See* PENAL CODE, SS 304 (1) AND 302.
A.I.R. 1938 Rang. 156.

CRIMINAL TRIAL

——*Conviction—Basis of—Murder—Grave suspicion—Evidence falling short of proof—If justifies conviction.*

Where it is not safe to infer from the
proved that the accused must have beer
a murder, a conviction is not justified
is undoubtedly cause for grave suspicion. If the evidence falls short of proof, a conviction is not sustainable. (*Burn and Mockett, JJ.*) RAMASWAMI *v.* EMPEROR.
1938 M.W

——*Conviction—Bench of*
signing judgment not hearing
on conviction.

A conviction by a Bench of
the magistrates who sign the judgment have not heard all the ev
SWAMY
1938

——*Conviction — Circumstantial evidence— Minor discrepancies—Effect of.*

Where the evidence against the accused is entirely

prosecution evidence, which are not of much importance, will not entitle the accused to an acquittal. The time or hours mentioned by the accused must not be taken as having been given with reference to time pieces, but must be taken obviously as having been given only approximately. The accused's failure to explain the

Although it may be stated generally that no crime can be committed unless there is a *mens rea*, there are exceptional cases where a man is treated as guilty and

——*Conviction—Murder—Circumstantial evidence—Sufficiency*

——*Conviction—Murder—Circumstantial evidence—Sufficiency for conviction.*

EMPEROR *v.* MUSSAMMAT JAGIA.
17 Pat. 369=1938 P.W.N 293=19 Pat L T. 268=
10 R P. 531=174 I C. 524=39 Cr L J 428=
4 B R 451=A I.R 1938 Pat 308.

——*Conviction—Prosecution failing to examine material witness—Effect.*

Where the prosecution have failed to examine an important witness in the committing Magistrate's Court on

CRIMINAL TRIAL.

whose evidence the prosecution and the Judge largely rely, and with whose evidence the evidence of other

——*Conviction—Testimony of interested witnesses corroborated by other evidence—Conviction—Sustainability.*

——*Cross-cases—Circular No. 52 of Judicial Commissioner's Court, N W. F. Province—Interpretation.*

By Circular No. 52 of the Court of the Judicial Commissioner, N.W.F. Province, it is intended that in cross-cases relating to same transaction the trial Judge should bring on each record separately the whole story complete by itself and should give findings on the issues involved in that case independently from those which
But it is never intended that a part
d be admitted in each case and the
it. (*Almond, J C. and Mir Ahmad, J.*) IBRAHIM *v.* EMPEROR. 174 I C. 137=
39 Cr.L J. 401=10 R Pesh. 58=
A I R. 1938 Pesh. 10.

——*Cross-cases—Fight between two rival factions—Prosecution of one party ending in discharge—Subsequent prosecution of other party—Prosecution witnesses in later case mostly accused in former case—Conviction—Propriety.*

Where rival parties fight over a feud with sticks and stones, and one of the parties is prosecuted, but discharged, it is unsafe to convict the other party on a prosecution commenced subsequently. Where the prosecution witnesses in the later case were mostly accused in the first case, their statements do not amount to evidence
nts of persons who were
same offence in the same
e admittedly they have not
usam, J.) SANNA BASYA *v.*
1937 M W.N. 1196.

——*Effect—Suspicion*

Where a prosecution is launched against a public servant after a delay of nearly four years, it rouses a
other end
v. SRI-
3 R. 755=
Pat 543.

—Public
—Duty of
Court to put such question

If the Public Prosecutor fails to put a witness a

——*Duty of Court—Justice to be done to accused and to appear to be done.*

It is the duty of Courts in criminal trials to give a judicial finding, after applying their minds judicially to the facts of the case, with reference to the case of each individual accused, and the evidence adduced on behalf of the accused in support of their case must also be carefully and fully considered Though the Courts may not

10 R P. 346=172 I.C. 780=4 B.R. 165= 39 Cr.L J. 156=A.I.R. 1937 Pat. 662.

——*Evidence—Evidence of children—Conviction on—Propriety.*

The evidence of children unless immediately available and unless [illegible] eliminated [illegible] convict on [illegible] *C.J. and B*[illegible] EMPEROR.

1938 P.W N. 266=10 R P. 456= 39 Cr.L J. 384=A I R 1938 Pat. 153.

——*Evidence—Interested evidence.*

Interested evidence is not necessarily false. (*Davis, J. C. and Lobo, J.*) JADO RAHIM *v.* EMPEROR. 178 I.C. 520=A.I R 1938 Sind 202.

——*Evidence—Murder of mother—Passers-by attracted by cries of child—Witnesses may speak not only of nature of cries but also of what child said.*

The evidence of the child is not admissible as evid- [illegible]

[illegible] plains their conduct. (*Davis, J. C. and Havelıwala, J.*) RABAN LALU *v* EMPEROR. 175 I C. 324= 10 R S 296=39 Cr.L J. 618=A I.R. 1938 Sind 97.

——*Evidence*—Post mortem *certificate—If evidence—Value and use of.*

A Criminal Court is not justified in treating the *post mortem certificate* as evidence and in extracting a sentence from it and relying on it as if it were positive [illegible]

Mockett, JJ.) RAMASWAMY *v.* EMPEROR. 1938 M.W N. 36=47 L.W. 272= A I R. 1938 Mad 336

——*Evidence—Prosecution under S. 401, I. P. Code—Evidence of association prior to period of charge—Admissibility.*

In a prosecution under S. 401, I P. Code, evidence of association before t[illegible] corroborate othe[illegible] period. (*Horwill,* [illegible]

——*Evidence—S*[illegible]

There is no provision in the Indian law requiring more than one witness to prove any fact. (*Weston.*) MEHTA *v* EMPEROR. 1937 A M.L J. 134.

——*Evidence—Supervision notes from police diaries sent to Court—Admissibility.*

Dhavle, J.—It is a mistake to exclude supervision notes from the police diaries sent to the Courts. The investigation may be (and usually is) in the hands of a [illegible] ed by supe[illegible] the diaries [illegible] be left in [illegible] rily determines the course of the investigation at point after point. Their exclusion is apt to lead to a miscarriage of justice, if not also to leave a suspicion that something must be wrong with the investigation which it is not desired should be known to the Courts. The notes cannot of course be used as evidence, any more than can the diaries of the investigating officer himself; but they usually make these diaries more intelligible and more [illegible] d trials. (*Dhavle and* [illegible] MANU CHICK. [illegible] 626=39 Cr.L J. 635= [illegible] =A.I.R. 1938 Pat. 290.

[illegible] can take the place of proof. *See* CRIMINAL TRIAL—PROOF OF GUILT. 40 P.L.R. J. & K. 1.

——*Evidence—Value of—Eye-witnesses first telling their stories 40 days after occurrence.*

The oral evidence of eye-witnesses who first told their stories about 40 days after the occurrence is not fully worthy of credit, and if further the circumstantial evidence is not such that it is inconsistent with the innocence of the accused, the accused must be acquitted. (*M. C. Ghose and N. A. Khundkar, JJ.*) EMPEROR *v.* [illegible] 66 C.L J. 500.

[illegible] *mation report* [illegible] s only a sus[illegible] on its guard [illegible] for rejecting evidence which is otherwise fully entitled to credit. (*Blacker, J.*) RADHA KISHEN *v.* EMPEROR, A.I.R 1938 Lah. 714.

——*Evidence—Value of—Prosecution witnesses not mentioned in first information report and not independent.*

The fact that none of the prosecution witnesses was mentioned in the first information report and most of them are not independent and made some statements [illegible] the com[illegible] sufficient [illegible] are suffi[illegible] ness and [illegible] nce with [illegible] orated by [illegible] o reason [illegible] sses were [illegible] are not totally independent. (*Zia ul-Hasan, J.*) DILDAR KHAN *v.* EMPEROR. 173 I C. 339= 1938 O.A. 154=1938 A.Cr C. 11=1938 O L R. 108= 1938 O.W.N. 184=10 R O. 220=39 Cr.L J 330= A I R 1938 Oudh 88.

——*Evidence—Value of—Statement of formal witness for prosecution assisting defence.*

[illegible] of a formal witness for the prosecution, to assist the defence, does not have that [illegible] it would have had if he had been a witness [illegible] ution as to the material facts of the case. RADHA KISHEN *v.* EMPEROR.

——*Evidence—Value—Test—Number of witnesses.*

Mere numbers cannot be taken into account for determining the value of the evidence. (*Mulla, J.*) PIR BUX *v.* EMPEROR. 1938 A.W R. (H C) 656= 1938 A Cr C. 122.

——*Evidence—Witness—Duty of prosecution and of Court to call—Omission to call witnesses—Effect of and inference to be drawn from—Considerations—Duty of Judge to tell jury.*

When the prosecution have produced sufficient evidence and the best evidence, it is not always incumbent on them to produce all possible evidence on less important facts. It cannot be laid down as a general proposition of law that the prosecution is or is not obliged

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to examine persons as prosecution witnesses as to whom the prosecution have reason to believe that they will not help the prosecution case, or that the Court is not bound to examine any person as a Court witness unless the witness appears to be essential to the just decision of the case. The effect of, and the inference to be drawn or not to be drawn from, the absence of relevant witnesses from the witness-box are matters to be considered with reference to the circumstances of each particular case and the facts which the witnesses, if called, would have been required to prove. The jury should be asked by the Judge to consider the same in the light of those circumstances and those facts. The Judge should give ... ance to the jury in deciding whether to dra... inference from the failure of the prosecution ... certain witnesses (*Noor and Rowland, JJ*) MIA *v* EMPEROR. 1933 P W N ... A.I.R. 1938 Pa...

——*First information repo*... ...*tion*

The presumption with reference to the ... tion report is that it represents the actual ... given to the police and taken down by ... defence should not be denied the right to ... ment because of the failure of the prosec... mally prove it. If the prosecution suggests that it is

...cised, it is exercised *ex debito justitiae* to do that real and substantial justice for the administration of which alone Courts exist, but the Court, in the exercise of such inherent power, must be careful to see that its decision is based on sound general principles and is not in conflict with them or with the intentions of the Legislature as indicated in statutory provisions. Certain persons were charged with conspiracy to commit criminal breach of trust and che... was over, the ... of the charges ... together and th... avoid misjoinder ... groups of the accused persons and or... trial of one of them

Held, that the Magistrate had acte... exercise of his inherent power in or...

A.I.R. 1938 Cal 258.

CRIMINAL TRIAL.

——Jurisdiction—Calendar case triable by First Class Magistrate on the file of Sub-Divisional Magistrate—Transfer by latter to Second Class Magistrate with direction to treat them as preliminary register cases —Propriety. *See* CR. P. CODE, S. 192.

(1938) 1 M.L.J. 403.

——*Jurisdiction—Statement of accused disclosing offence not triable by magistrate—If ousts jurisdiction of magistrate.*

A statement by an accused person that the offence committed by him is a more serious one than one triable by the magistrate does not deprive the magistrate of ...

——*Presumption of innocence—Doctrine of*

——*Procedure—Charge—Dropping of—Rule—Accused committed on several charges—Sessions Judge framing new charge and trying only under that charge—Absence of any order or trial in respect of other charges—Legality.*

It is better to have too many charges than too few, and once a charge has been framed, it should not be dropped until the conclusion of the trial unless on the ...

39 Cr.L.J.

CROWN GRANTS ACT (1895), S. 3.

general law of the land be. By reason of this section, a restrictive clause in a Crown lease which compels the lessee to refer any boundary dispute with the adjoining lessee, only to revenue authorities, is not affected by S. 28 of the Contract Act. But such a clause cannot be availed of by a lessee of an adjoining lot, to oust the jurisdiction of the Civil Court, for the reason, that his predecessors-in interest were not parties to the contract entered into between the Secretary of State in Council and the other lessees' predecessors in interest. (*Mitter, J.*) JNANENDRANATH NANDA *v.* JADUNATH BANERJI. I.L.R. (1938) 1 Cal. 626=42 C.W.N. 81= A.I.R. 1938 Cal. 211.

——S. 3—*Scope and effect of—If confers a right to sue.*

All that S. 3 of the *Crown Grants Act* means is that the Crown is entitled to put such conditions in a grant which a private individual could not, but the only advantage to the grantee is that the grant to him is not [illegible]

1938 O W.N. 462=1938 O L.R. 244=10 R.O. 287= A.I.R. 1938 Oudh 175.

——S. 3—*Scope and effect — Grant of village to Jagirdar to be enjoyed by grantee and his heirs—Prohibition on alienation—Successive life estates to grantee and his heirs—Validity—Attachability of village—C. P. Code, S. 60.*

It is competent to the Crown to make a heritable grant of a village, conferring on the grant not an absolute estate, but a limited interest to enjoy the rents [illegible] a similar in- [illegible], it is open to [illegible] or limited in- [illegible] nay be imposed by the Crown either by virtue of an enactment or by a grant. S. 3 of the Crown Grants Act is clear and expressly mentions that all limitations contained in a Crown grant shall be valid and take effect according to their tenor notwithstanding any statute or enactment of the Legislature, which would take in S. 60, C. P. [illegible]

Russooms and Marahs at the rate stipulated in the dowle . . . and to appropriate the amount to your own use." The grantee was also made "to understand that the said village is inalienable by gift, sale or otherwise, but in default of legal heirs, the said village shall revert to the honourable company".

Held, (1) that it was competent to the Crown to [illegible]

CUSTOM.

(*Venkataramana Rao, J.*) SUNDARARAJULU NAIDU *v.* PAPIAH NAIDU. I.L.R. (1938) Mad. 767= 1938 M.W.N. 440=A.I.R. 1938 Mad. 624= (1938) 1 M.L.J. 696.

CUSTOM.

- **Abrogation.**
- **Change of custom.**
- **Customary right.**
- **Haq i i-chaharam.**
- **Jains.**
- **Nattukottai Chetties.**
- **Pleading and proof.**
- **Proof.**
- **Validity.**

——*Abrogation—Proof.*

It cannot be said that once a custom is proved to exist, it cannot be altered except by subsequent legislation. It is well settled that just as the will of the community established a custom in the first instance, so the same community may by expression of its collective will, evidenced by well-established practice extending over a sufficiently long period, abrogate or change the custom. (*Tek Chand, J.*) ABDUL MAJID *v.* SUBA KHAN. 40 P.L.R. 588.

——*Abrogation—Proof — Village expanding and showing features of town—If proves abrogation of custom.*

Where a wajib-ul arz has recorded the existence of a custom restraining alienations by non-proprietors in a village, the fact that the village has expanded since then and shows some features of a town cannot by itself be held to be enough to show that the custom has been abrogated. (*Bhide, J.*) RATI RAM *v.* SHERA RAM. 40 P.L.R. 990.

——*Change of custom—Proof—*Wajib-ul arz *recording custom restraining alienations by non-proprietors —Proof of subsequent instances of alienation—Effect of.*

Where a *wajib-ul-arz* has recorded the existence of a custom restraining alienations by non-proprietors in a village, a change of custom could not be established except by overwhelming testimony of a vary large number of instances of alienations by non proprietors spreading over a long period which could not be compatible with any other conclusion except that the custom had since changed. Proof of particular sales [illegible] would ordinarily [illegible] he purchaser [illegible] give title to [illegible] village site, [illegible] proprietary [illegible] een extingui- [illegible] RAM. 40 P.L.R. 990.

——*Customary right — Easement — Distinction between.*

A customary right is not an easement properly so called. An easement proper belongs to a determinate person or persons in respect of his or their land. A congeries of persons like the inhabitants of a locality, unless incorporated as a determinate juridical person, [illegible] elongs [illegible] so to [illegible] rsons, [illegible] to the [illegible] DE *v.* [illegible] 270= [illegible] 1 202. [illegible] omary [illegible] t only [illegible] lation

CUSTOM.

v. CHUNNILAL PANCHAMSAO A I R 1938 Nag. 391.

——*Nattukottai Chetties—"Samans"—Right of foreign agents to*

——*Proof—Few instances of recent times—Sufficiency.*

A custom can be established only by proof of 'ancient' instances and a few instances of rec[illegible] sufficient A I R 1937 Lah. 451 F[illegible] *Chand, J.*) NOTAN DAS v. KARAM[illegible]

40 P L R 690 = 177 I C 513 = 1[illegible]

A.I.F[illegible]

——*Proof of—Immemorial user—Presumption as to—Limits of rule—Right to exclusive user of public tank.*

Where a declaration was sought that the plaintiffs

CUSTOM.

ALI 40 P L R 796 = A I R 1938 Lah 792.

——*Proof of—Length of time necessary*

Proof of the existence of custom over a period of

——*Proof of — Requisites — Different versions—*

The evidence for custom must be substantial. The custom must be certain. Where a plaintiff was changing the terms of an alleged custom from time to time and failed to formulate the custom clearly and consistently

A I R 1938 All 345.

——*Proof—Nature of evidence necessary—Strict construction*

A custom to be a rule having the force of law must

CROWN GRANTS ACT (1895), S. 3.

general law of the land be. By reason of this section, a restrictive clause in a Crown lease which compels the lessee to refer any boundary dispute with the adjoining lessee, only to revenue authorities, is not affected by S. 28 of the Contract Act. But such a
be availed of by a lessee of an adjoining
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predecessors in interest were not parties
entered into between the Secretary of State in Council and the other lessees' predecessors in interest. (*Mitter, J.*) JNANENDRANATH NANDA *v.* JADUNATH BANERJI. I.L.R. (1938) 1 Cal. 626=42 C.W.N. 81= A.I.R. 1938 Cal. 211.

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1938 O.W.N. 462=1938 O.L.R. 244=10 R.O. 287= A.I.R. 1938 Oudh 175.

by the Crown either by virtue of an enactment or by a

intended
s made in
property
ler was to
enjoy the rents and profits during his life and they are attachable and saleable; (6) and the proper order to be made was to direct the appointment of a receiver.

CUSTOM.

(*Venkataramana Rao, J.*) SUNDARARAJULU NAIDU *v.* PAPIAH NAIDU. I.L.R. (1938) Mad 767= 1938 M.W.N. 440=A.I.R. 1938 Mad. 624= (1938) 1 M.L.J. 686.

Jains.
Nattukottai Chetties.
Pleading and proof.
Proof.
Validity.

——*Abrogation—Proof.*

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40 P.L.R. 588.

— Village expanding and
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*—Proof—*Wajib ul arz *recor-*
alienations by non-proprietors
instances of alienation—Effect

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of particular sales
n would ordinarily
tle of the purchaser
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s of the proprietary
had been extingui-
HERA RAM.
40 P.L.R. 990.

——*Customary right — Easement — Distinction*

tomary right is not an easement properly so
An easement proper belongs to a determinate
or persons in respect of his or their land. A
s of persons like the inhabitants of a locality,
unless incorporated as a determinate juridical person,
A customary right belongs
cular. Easements are, so to
longing to particular persons,
public rights annexed to the
place in general (*Biswas, J.*) HARI SADAN DE *v.* RADHIKA PRASAD PANDIT. 66 C.L.J. 270= 175 I.C. 252=10 R.C. 781=A.I.R. 1938 Cal 202.

——*Customary right—Village pathway—Customary easement—Proof of.*

Persons claiming a customary easement have not only to prove the elements required by S. 26 of the Limitation

CUSTOM.

Act, but also something more, namely, that the custom set up was ancient, continuous peaceable, certain and compulsory. Where a pathway as a village pathway, and not as pathway, it is necessary to show that was of the pathway as a village pathway, shown to have been used by the inhabita village concerned as such and not as mem general public. (*Biswas, J.*) HARI SAD RADHIKA PRASAD PANDIT. 66 C
175 I C. 252=10 R C. 784=A.I.R. 193

——Haq i chaharam—*Liability to pay—to involuntary sales also*

Where by a custom the Zamindar is entitled in the ca ... ha ... in ... G.

— ail

co

family (*Weston, I. C. S.*) CHAND KOER *v.* PEM RAJ. 1938 A M L J. 79.

——*Jains—Widow if takes absolute estate.*

The widow takes an absolute estate general and not merely in some partic (*Stone, C J. and Bose J.*) TULSIRAM *v.* CHUNNILAL PANCHAMSAO A I R 1938 Nag. 391.

——*Nattukottai Chetties—" Samans"—Right of foreign agents to.*

——*Pleading and proof—Necessity — Established custom of universal nature*

If a custom is universal and established by a series of decisions, a stage may be reached when the custom ...

——*Proof—Few instances of recent times—Sufficiency.*

A custom can be established only by proof of 'ancient' instances and a few instances of recent times are not sufficient A I R 1937 Lah 451 F B), Foll (*Tek Chand, J*) NOTAN DAS *v.* KARAM HUSSAIN SHAH
40 P L R 690=177 I C 513=11 R L 333 (2)= A.I R 1938 Lah 447

——*Proof of—Immemorial user—Presumption as to—Limits of rule—Right to exclusive user of public tank.*

Where a declaration was sought that the plaintiffs were entitled to the exclusive user of a public tank, on the ground of an alleged immemorial user, ...

CUSTOM.

tenure or a contract or a family right, is repeatedly ...

unless they bind created by them as evidence is *J.*) TULSIRAM KHIRCHAND *v.* CHUNNILAL PANCHAMSAO.
A I R. 1938 Nag 391.

——*Proof—Judicial decisions—Value of.*

Judicial decisions on questions of custom are not of ... and ... case. ... AJIR ALI. 40 P L R 796=A I R 1938 Lah. 792.

——*Proof of—Length of time necessary.*

Proof of the existence of custom over a period of ...

existence of substituted custom can be proved by a series ...

——*of — Requisites — Different versions—*

The evidence for custom must be substantial. The custom must be certain Where a plaintiff was changing the terms of an alleged custom from time to time and failed to formulate the custom clearly and consistently the custom cannot be said to be proved (*Bennet and Ganga Nath, JJ*) JALESHWARI PRATAP NARAIN SINGH *v* PATESHWARI BAKSH SINGH
1938 A W R (H C) 284=175 I C 594= 10 R.A 705=1938 A L R. 456= A I.R 1938 All 345.

——*Proof—Nature of evidence necessary—Strict construction*

A custom to be a rule having the force of law must ... must ... and ... ist be ... and ... RAGHURAI *v.* BINDRA PRASAD.
1938 O W.N. 547=1938 O.A. 417=

CUSTOM.

1938 O L.R. 252=175 I C. 32=10 R O. 294=1938 R D. 575=A.I.R. 1938 Oudh 140 (F B.).

——Validity—Custom opposed to public policy—Transfer of office of temple trustee in return for monetary consideration—Legality of *See* MADRAS HINDU RELIGIOUS ENDOWMENTS ACT, S. 57.

——*Validity—Essentials—* ... *of "pahunch" or ordinary rece*

Before a Court of Law can ... a valid one it must have the ... reasonableness ; (2) certainty ...

ordinary law, it must be established by instances that the custom had come into ... consistent with the inc ... nevertheless prevailed. ... cantile usage it is not ... alleged practice is wha ... A custom which makes a pahunch of an ordinary ...

pahunch being to escape payment of the requisite stamp duty which would otherwise be required for transferring it (*Mehta, J*) ... CHETUMAL BULCHAND ... 173 I C 591=10 R ...

——Validity—Scavengi ... ferability—Legality of. *See* SPECIFIC RELIEF ACT, S 56.

——Validity — Des ... District—Adoption of ... —ADOPTION

——*Validity—Essen*

A local custom need ...

LAXMANAPPA RAMAP ...

——(Jammu and ... *of—Chib Rajputs of* ...

A childless Chib Raj ... unrestricted powers in ... ancestral landed proper ... *JJ.*) WALIDAD KHAN *v.* MAHOMED KHAN. 40 P.L.R. J. & K. 47.

——(N.W.F P.)—*Validity—Adoption of sister's son—Rawas.*

The Rawas who claim a Rajput origin can adopt the son of a sister. (*Darling, S.M. and Bomford, J M.*) GANGA DEI *v.* MOHAMMAD HABIBUR RAHMAN KHAN. 1937 R.D. 583.

——(N. W. F. P.)—*Alienation — Powers of—Awans.*

The case of each tribe should be decided on its own custom. Awans are governed by Awan Customary law and the mere fact that they live in a village Kukar which is part of Tapa Daudzai does not alter the position. According to the customary law of Awans, the Awans have unrestricted power of making testamentary dispositions of their property and hence a will in favour of sister's sons to the total exclusion of collaterals is valid. (*Almond, J. C. and Mir Ahmad, J.*) ISMAIL

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KHUSHAL *v.* YAKUB MADAD KHAN. 177 I.C. 793=11 R. Pesh. 35=A.I.R. 1938 Pesh. 58.

——(N. W. F. P.)—*Alluvion—Right of riparian owner.*

Where a riparian owner claims land formed by ...

... wner of the land as soon ... (*Almond, J. C.*) PASAND ... 154=11 R. Pesh 17=A.I R. 1938 Pesh 48.

... *to cultivator* ... *ht to make—* ... *—Consent of*

... tial village of ... effect that the allocation of ... by the *lambardar* and the ... e be a new one or an abandoned ... se is standing, the *punches* ... can be allotted to a cultivator. (*Agarwala, J.*) GAYA SAHU *v.* DEBARCHAN BHOKTA. 1938 P.W.N. 524=19 Pat L T. 663.

...)—*Abadi—Building sites granted to* ... *—Terms of grant—Presumption.*

... villages, it is a matter of presumption that the *abadi deh* is a common property of the proprie- ...

transfer and that this condition has been accepted by any non proprietor accepting the grant. The presumption may be rebutted in a variety of ways. It may be shown that the course of dealings between proprietors and non-proprietors over a long term of years has been such as to indicate that no restriction on transfer is implied when a grant is made. But the presumption is not rebutted by the mere fact that a number of *pucca* houses have been built on the sites by the non proprietors in the village. (*Beckett J.*) CHUNI LAL *v* BEANT SINGH. 40 P.L.R 634=178 I C 551=A.I.R. 1938 Lah. 642.

——(Punjab)—*Abadi—Ferozepura—Right of reversion in malba of houses of non proprietors.*

On the non proprietors leaving, the right of reversion of the malba of the houses of the non proprietors in Abadi Ferozepura held vested in the founder of that abadi alone and not in all the proprietors of the village.

CUSTOM (PUNJAB).

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A ...

De ...

management.

It cannot obviously be consid[...] good management to sell propert[...] when there is necessity for a loan only. (*Bhide and Beckett, JJ*) HINDAR SINGH. A ...

——(Punjab)—*Alienation—An.* ...

the Court on fair and rational grounds. Amounts borrowed by a big zamindar with a large income and living in a style suited to his social status, for costly clothes and ornaments cannot be considered to be a very unreasonable expenditure so as to exclude the debts from the category of "just" debts (*Bhide and Beckett, JJ*) IQBAL SINGH *v.* MAHINDAR SINGH.

A.I.R. 1938 Lah 648.

——(Punjab)—*Alienation—Ancestral land—Necessity— Purchase of ornaments*

...

——(Punjab)—*Alienation— Ancestral land —Necessity—If must exist at the time of alienation*

Even a male proprietor is not entitled to encumber ancestral property for his future requirements, the necessity to support an alienation of ancestral property must exist at the time of the alienation. (*Bhide and Beckett, JJ*) IQBAL SINGH *v* MAHINDAR SINGH

A.I.R. 1938 Lah 648.

——(Punjab)—*Alienation — Ancestral property— Alienation in lieu of dower debt—Validity.*

Under Mahomedan law dower is to be regarded as a debt due from the husband to the wife This debt is payable on demand. Such debt being a just antecedent debt arising out of the contract of marriage the husband is fully entitled to alienate ancestral land in favour of his wife in lieu of this debt provided it is not unreasonably high. The question as to what is regarded as a reasonable amount of dower is a question of custom and it is incumbent on the party to raise this point in its pleadings and to lead evidence thereon. Where a

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... *—Ancestral property— sold was house property ... sufficient to take it out* ...

——(Punjab)—*Alienation—Antecedent debt—Debts incurred after agreement of sale and latter included in consideration for that sale.*

An "antecedent debt" means a debt which is not only antecedent in time, but also antecedent in fact, *i.e.,* it must be truly independent of the transaction impeached In other words, the two transactions must be dissociated in time as well as fact. Debts which were incurred after agreement relating to the sale was entered into and which were later on included in the consideration for that sale cannot be properly held to be ... d Beckett, JJ) IQBAL ...

A.I.R. 1938 Lah. 648.

... *— Necessity —Antecedent debt— joint debts incurred by members of family for ordinary household necessities*

It is quite a usual practice for agricultural families to incur joint debts for ordinary household necessities and both parties commonly gain the benefit of the joint credit so obtained. Where there is no reason to suppose that the expenditure covered by a joint debt has been wastefully extravagant, a joint debt can be regarded as a just antecedent debt. (*Beckett, J.*) ALI MOHAMMAD *v* NUR MOHAMMAD.

A.I.R. 1938 Lah. 858.

——(Punjab)—*Alienation—Necessity—Enquiry by alienee—Sufficiency.*

The onus lies on the alienee to prove either that there was legal necessity in fact which would justify the alienation, or that he made a proper and *bona fide* enquiry into the alleged necessity and satisfied himself as to the existence of such necessity. If he fails to prov[e] that there was a necessity in fact, alienation may [be] upheld if he proves that he made enquiry as to [the exis]tence of the alleged necessity, and that the

sented to him were such as, if true, would have justified the transaction. If he discharges this b... bound to see that the money paid by ...

———(Punjab)—*Alienation—Non proprietor—Rights of—Village Chotala in Sirsa Tahsil of Hissar District.*

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———(Punjab)—*Alienation—Powers of— Ancestral property—Sanda Jats and agriculturists of Mianwali District*

Among Sanda Jats and the agriculturists of Mianwali District, generally, a male proprietor has unrestricted power of alienation in respect of ancestral property and such property can be attached and ... for realization of his unsecured ... (*Tek Chand and Abdul Rash* ... NAWAZ *v* KAURA RAM ...
178 I C. 74=...

———(Punjab)—*Alienation—Powers—Gift by widow in favour of daughter—Rohtak District.*

According to the entry in the riwaj i am of the Rohtak District a daughter has no right to succeed to her father's landed property, whether an... acquired, and a widow has no right to ... band's property whether ancestral ... When such entry is challenged the bur... the party to prove that the entry in th... wrong. (*Jai Lal and Dalip Singh, JJ.*) MT. JAWAHRAN *v.* HAZARI. 40 P.L R 937= A.I R. 1938 Lah. 562

———(Punjab)—*Alienation — Right to c... Sale by plaintiff's grandfather long befor... was begotten — Consent given to sale by father.*

The alienation by sale of the ancestral ...

the sale. Of these, one was the father of the plaintiff who had attes... suit in 1901, ... was dismissed ... a defendant a... the plaintiff b... tion, on the g... without consi... proved that th... sale *mala fi*... reversioners.

Held, that the sale having become indefeasible at the instance of any reversioner long before the plaintiff was begotten, the plaintiff had no *locus standi* to sue.

Held, further, that the plaintiff's suit was barred by the consent given by his father to the sale. (*Tek Chand, J.*) SOHAN SINGH *v.* DANU.
40 P.L.R. 728=A.I.R. 1938 Lah. 467.

———(Punjab)—*Alienation—Setting aside—Declara*...

...*rma* defendant and no question of collusion with the ...fendant against whom relief is claimed really arises ... it does, *e.g.*, in suits for divorce, etc. Again when such a suit is instituted on behalf of a minor, there cannot obviously be any collusion on the part of the plaintiff in the above sense, as a minor is legally ... Even when ... ion would not ... decree is to ... other rever... this purpose (*Bhide and Beckett, JJ.*) IQBAL SINGH *v.* MAHINDAR SINGH.
A I R 1938 Lah. 648.

———(Punjab)—*Alienation—Setting aside—Declaratory suit by son—Collusion—Proof—Son living with father.*

Where a son brings a declaratory suit challenging the ... father, the mere fact ... e vendor was living ... the suit being dis... ...*ckett, JJ.*) IQBAL ...
A.I.R. 1938 Lah. 648.

———(Punjab) — *Alienation — Validity — Agriculturist unable to manage cultivation and indebted, selling land to non-agriculturist with sanction of Deputy Commissioner.*

... who was not able to manage ... much indebted and not even ... venue, sold the land to a non- ... ction of the Deputy Commissioner.

Held, that the sale was an act of good management and could not be attacked by his sons. (*Sir Shadi* ...

... *and non*- ... *—Whole, if non-ancestral.*

...apply the onus is on that party of showing that custom applied, and further he must plead the custom alleged in precise terms and must by evidence establish the custom as pleaded. In many cases the party alleging a custom may by the mere production of the *riwaj i-am* be able to give *prima facie* evidence of the custom alleged and so cast the onus of proof on his opponent, but this circumstance does not obviously affect the universality

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of the proposition that he whc plead and prove it. (*Young*, *Mohar*

———

town.

The Customary law of the District is based on enquiries made in rural areas at the time of the settlement and no representatives from towns are consulted as a rule. The Mahajans of Hissar town, whose main source of livelihood is business not governed by the Customar law. And the mere fact that at the time of preparation of show that the *riwaj i am* w obtaining amongst all Mahajar particularly amongst residents of towns. (*Bhide, J.*) PATRU MAL *v.* BADRI PARSHAD 40 P.L.R. 781=177 I.C. 403=11 R.L. 313= A.I.R. 1938 Lah. 461.

——(Punjab)—*Applicability—Pawalis of Bhera*

Where a person asserts that he is governed by custom, it is incumbent upon him to prove that he is so governed and further to prove what that custom is,

Held, that Pawalis of Bhera in Sha not proved to be governed by custom by Mahomedan law. (*Abdul Rashid* c

They the pecial custom, namely, that after the death of a husband leaving a widow without sons and sons by another wife, the widow gets a life interest in half of the property of her husband, is on the widow. Such special custom cannot be established by only one instance to that effect. (*Addison and Abdul Rashid, JJ.*) MILKHI RAM *v.* MT. RAJJI. 40 P.L.R. 912=178 I.C. 316= A.I.R. 1938 Lah. 609.

——(Punjab)—*Gift—Ancestral land—Arains of Jullundur Tahsi'*

Among Arains land made by a the consent of tl *Din M*

———

for partition.

value.

When the Customary law is silent on a certain point, there is no reason why the local *riwaj-i-am* should not be accepted As the entries are public documents, these entries can be used as evidence of the existence of a custom, whether instances exist or not (*Beckett, J.*) DASAUNDHI *v.* LAL SINGH.

A.I.R. 1938 Lah. 849.

——(Punjab)—*Riwaj i-am—Entry in — Onus—Discharge of onus by earlier riwaj-i-am supported by instances.*

y instances its who alleges a riwaj i-am to onus can be discharged by his aj i am supported by instances.

——(Punjab)—Riwaj i am—*Entries in—Presumption of correctness—Rebuttal—Judicial decisions to the contrary.*

n entry and a after an *ide, J.*)

366= A.I.R. 1938 Lah. 309.

——(Punjab)—Riwaj i-am—*Statements in—Value of.*

The statements of customs recorded in the riwaj i am of a tahsil or district regarding the customary law followed by the various tribes holding land in the tahsil in matters of succession are by themselves strong evidence of the customs followed by members of those (*Coldstream and* SINGH. R 1938 Lah. 55.

erved for com-

could be taken until partition, *on any part of a* pond reserved for the common purposes of the village or cut trees without the consent of the other proprietors. (*Tekchand, J.*) RATI RAM *v.* BALWANT 40 P.L.R. 633=A.I.R. 1938 Lah 768.

——(Punjab)—*Shamilat land—Right of co-sharer to erect building.*

Per *Din Mohammad, J.*—No individual proprietor can appropriate to himself a portion of the common land without the consent of all other co sharers and use it in such a way as to affect the rights of all the co-sharers at the time of partition. Where therefore a co sharer begins building on a part of common land rharers can restrain him any special damage to an be granted in such a *Abdul Rashid, JJ.*) H *v.* BHANA 175 I.C. 412= R.L. 710=A.I.R. 1938 Lah. 296 (S.B.).

ab)—*Succession—Appointed heirs' descen- to succeed collaterally in family of ap-*

——(Punjab)—*Succession—Daughter v. Collaterals—Khatris of Phalia tahsil of Gujrat District.*

Khatris of Phalia tahsil of Gujrat District follow custom according to which daughter cannot inherit ancestral property in presence of her father's collaterals. (*Coldstream and Jai Lal, JJ.*) NIDH KAUR *v.* GIAN SINGH. 176 I.C. 801=11 R.L. 230= A.I.R. 1938 Lah. 55.

——(Punjab)—*Succession—Daughter— A tral property—Exclusion laterals— Khushab Tahsil in Shah*

In the case of Awans of Khushab Tahsil in Shahpur District, according to the c[...] collateral is not entitled to succ[...] perty of a deceased person [...] daughter. (*Bhide, J.*) SHER [...] KHATUN. **40 P.L.R 29=117 I C 775= 11 R.L. 366=A.I R. 1938 Lah. 309.**

——(**Punjab**)—*Succession—Daughter—Rajputs of Garhshanker Tahsil.*

Among Rajputs of Tahsil Garhshanker, a c[...] succeeds in the presence of heirs and collateral[...]

[...]

of Amritsar district.

Among Sansi Jats of Amritsar district, daughters exclude collaterals [...] the self-acquired p[...] *and Skemp, JJ*) **177 I C. 420=** [...]

——(**Punjab**)- [...] *perty inherited by daughter—Devolution.*

According to the custom recorded in the *riwaj i am* of Delhi Province, the proprietors of the thulla are [...]

[...] to property inherited by her as a daughter. In the [...]

[...]

exclude collaterals.

Among Khokhars daughters exclude male collaterals in succession to the self acquired property of their father. (*Addison, Ag. C.J and Din Mohammad, J.*) SIKANDAR *v.* MT KARAM NISHAN. **A.I R. 1938 Lah 842**

——(**Punjab**)—*Succession—Right of—Sameness of got.*

[...]

——(**Punjab**)—*Succession — Sisters' sons—Jats of village Dholewal in Ludhiana District.*

Among Jats of village Dholewal which is situated in Tahsil Ludhiana of the Ludhiana District, sisters and their sons do not succeed even in the absence of collaterals to the self-acquired as well as the ancestral [...]

[...]

In a case where a widow has succeeded collaterally, after her death it is the heirs of her husband who have to be sought for and not the heirs of the last male [...]

[...]

reversioners.

A decree obtained by an alienee against a widow in respect of an alienation made by her husband during his lifetime is binding on the reversioners, as it is a well recognised rule that a widow represents the estate [...]

[...]

such rights.

Where a widow of a deceased tenant to whom land was granted as a tenant on abadkari or peasant terms, [...] ding to the [...] wner, and [...] her acts. [...] SINGH *v.* [...] ah. 271= [...] .C. 331= [...] Lah. 554.

——(**Punjab**) — *Widow — Rights of — Property* [...]

[...]

District has power, in the absence of sons, to dispose of by will both his ancestral and self acquired property.

[...]

bequest.

[...] ng the *Sials* of Jhang, a [...] e of his sons as against [...] is ancestral (*Dalip* [...] MOHAMMAD *v.* ZUL [...] **345=40 P.L R 145= A.I R. 1938 Lah. 312.**

[...] *ecuted by codicil—Law applicable.*

A Cutchi Memon is governed by the Mahomedan Law so far as the execution of his will and a codicil is concerned. 43 Bom. 641, Rel. on. (*Wadsworth, J.*) MAHOMED YOONUS *v.* ABDUR SATTAR ISMAIL. **47 L W. 719=1938 M W.N. 699= A.I.R. 1938 Mad. 616=(1938) 1 M L J. 444.**

DAMAGES.

See also (1) CONTRACT ACT, Ss. 73-75.
(2) INTEREST.
(3) TORT—DAMAGES.

DAMAGES.

——*Claim of—Obstruction to plaintiff's enjoyment of rights by decision of Court in favour of defendant—Liability of defendant in the circumstances.*

Remote damages—If can be recovered—Rule.

Both as regards actions in contract and actions in tort, the damage which can be recovered by a plaintiff

the immediate consequence of the breach of contract or tort and the damage or injury complained of. Plaintiffs commenced to manufacture brick on a plot of land which they took on lease from certain Mahomedans. The defendants alleging that the plaintiff were desecrating a grave yard approached the police and informed the police that the action of the plaintiffs would lead to a

DEBTOR AND CREDITOR—Appropriation of payments—Decree debt—Sums received by way of rateable distribution—Mode of appropriation—Costs awarded under decree—If to be excluded. *See* C. P. CODE, S. 73 1938 M.W.N. 1210.

debt is the mutual agreement of the creditors to forego parts of their claims One method of arrangement of an insolvent debtor's affairs which the law recognizes is an

DEBTOR AND CREDITOR.

assignment of the debtor's property to a trustee for realization and distribution of the proceeds rateably amongst all the debtor's creditors, or amongst those who assent

estate. When the instrument expresses the arrangement to be with the creditors generally, or all creditors who assent to it, any creditor who actually or by his conduct

the conditions of the arrangement which apply to the creditors If he takes any step which is inconsistent with or opposed to those conditions, as, for instance, by bringing an action against the debtor to recover his debt, he will be liable to be excluded from the benefit of the arrangement. This obligation is binding not only on creditors who execute a deed of arrangement or ex-

against other—Principles *See* LEASE—ASSIGNMENT BY LESSEE. 40 Bom.L.R. 497.

——*Place of repayment——Negotiable instrument.*

The ordinary rule under which the debtor must seek his creditor does not apply in the case of a negotiable

upon the owner of the property, who alone stands towards the trustees in the relation of *cestui que trust* can recall the money and authority at pleasure. It is

DEED.

Consideration.
Construction.
Execution.
Liability under.
Validity.

——*Consideration —Burden of proof —Sale deed reciting payment of price—Plea of want of consideration—Onus.*

Where the fact that consideration was paid in the presence of the Registrar is recorded in the sale deed, the onus to prove that consideration did not pass and that the sale deed was fictitious is on the party alleging it to be so. (*Wort and Manohar Lall, JJ.*) JOTI LAL SAH v. MT. RAMESWARI KUER.
176 I.C. 129 = 4 B.R. 682 = 11 R.P. 51 =
A [illegible]

——*Consideration —Onus of* [illegible] *by Registrar reciting payment of* [illegible] *of—Denial of consideration—Onu*[illegible]

The onus of proving that a tra[illegible]

[illegible]

——*Consideration—Release deed in favour of mortgagor—Proof of consideration —Evidence of mortgagor—Sufficiency.*

The uncorroborated e[illegible] mortgagor could not be considered sufficient [illegible]

[illegible] 575 =
380.

——*Considera*[illegible]

Where the [illegible]
passing of consid[illegible]
the want or inade[illegible]
Puranik, JJ.)

DEED.

BALLABHJI. 176 I.C. 57 = 11 R.N. 24 = A.I.R. 1938 Nag. 30.

——*Construction—Boundaries—Mistake in description of property within—Rule to be observed.*

When the description of boundaries is precise and accurate such description ordinarily will override mistakes or omissions in the description of property within those boundaries. (*Weston.*) RAM NATH v. BAHADUR SHAH KHAN. 1938 A.M.L.J. 56.

——*Construction—Boundaries and area—Surrounding circumstances—When can be looked to—Intention of parties—Grant—Extent of property granted—Ascertainment—*Falsa demonstratio—*Doctrine of—Applicability and value of.*

[illegible] terms of a document or grant it is [illegible]

[illegible] document the only [illegible]

[illegible] which there is no really [illegible] and cannot be ignored. If, however, it [illegible] given and no [illegible] fore be entirely [illegible] he doctrine of [illegible] very little use [illegible] any particular [illegible] of a boun[illegible]

[illegible] fore or after the [illegible] yana Rao, JJ.) [illegible] IAN AMBALAM.
1938 M.W.N. 335 = A.I.R. 1938 Mad. 525 = (1938) 2 M.L.J. 490.

——*Construction — Clause in bond that stated* [illegible] *signed by directors* [illegible] *entitled to bring within* [illegible] *by it.*

A clause in a bond provided as follows: "... and also any balance of account which may be found due by the said obligor to the said company and of which said [illegible] made out of the [illegible] tified by the [illegible] pany shall be [illegible] at any other

DAMAGES.

——*Claim of—Obstruction to plaintiff's enjoyment of rights by decision of Court in favour of defendant—Liability of defendant in the circumstances.*

complained of and damage or injury—Necessity for—Remote damages—If can be recovered—Rule.

Both as regards actions in contract and actions in tort, the damage which can be recovered by a plaintiff complaining of a breach of contract
damage which necessarily flows from
contract or from the action of the defe
of a tort. To entitle the plaintiff to
there must be something immediately flowing out of the breach of contract or tort complained of, something immediately connected with it, and not merely connected with it through a series of causes intervening between the immediate consequence of the breach of contract or tort and the damage or injury complained of Plaintiffs commenced to manufacture brick on a
which they took on lease from certain
The defendants alleging that the plaintiff

plated damage by rain as the result
could the damage by rain be s
necessarily from the action of the
damage was too remote and ther

DEBTOR AND CREDITOR.

assignment of the debtor's property to a trustee for realization and distribution of the proceeds rateably amongst all the debtor's creditors, or amongst those who assent

debtor under a revocable authority to deal with the estate. When the instrument expresses the arrangement to be with the creditors generally, or all creditors who assent to it, any creditor who actually or by his conduct

come in under the arrangement and share in its benefits notwithstanding that the proper time for accession has elapsed. On the other hand, a creditor entitled to the benefit of an arrangement must perform fairly all the conditions of the arrangement which apply to the creditors If he takes any step which is inconsistent

DECLARATION.

arrangement by the debtor for his own convenience only and there can be no privity between the agent and the creditors. Where, however, a trust in favour of creditors has been communicated to the creditors, it can no longer be revoked by the settlor, because the creditors, being aware of such a trust, might have been thereby induced to a forbearance in respect of these claims which they would not otherwise have exercised, and *a fortiori* will this be the case when the deed has been acted upon. The communication may be proved by the creditors by their having acted upon it or being
English cases relied on. (*Madh*
and Stodart, J.) NAGABH

S. 42.

——*Granting of—Discretion of Court—Wrongful dismissal of servant—Refusal of declaration where damages adequate remedy.*

In the case of a wrongful dismissal of a servant, the relief by way of damages is an adequate remedy and that being so, a Court can in its discretion refuse a declaration or injunction. (*Harries and Rachhpal Singh, JJ*) PRABHU LAL
BOARD OF AGRA.
1938 A.W.R (H C) 223=1
1938 A.L.R. 5

DECLARATORY DECREE. *See* SPECIFIC RELIEF ACT, S. 42.

DECREE

- Appellate decree
- Conditional decree
- Construction
- Declaratory decree.
- Instalment decree.
- Payment under.
- Recitals in.
- Rights under.
- Setting aside.

——*Appellate decree— Ruling decree*

Where there is an appellate decree, that is the decree that has to be construed, and that decree takes the place of the
Digby, J.)
RAO RAMJI.

——*Conditional decree—Time limit imposed for fulfilment of condition—Appeal filed—Running of time.*

Where a decree directs something to be done by way of a condition and imposes a time limit, the time will run, when an appeal is filed, not from the date of the original decree but from that of the appellate decree, although the position is
decree is carried into exe
heard. (*Khundkar, J.*)
KANTA BEHARA

——*Construction—Decr*
Executability—Presumptio

DECREE.

——Construction—Direction to party to deposit amount in Court within fifteen days from date of decree—Interpretation of—Date of decree—If to be excluded — Intention of Judge — If material. *See* GENERAL CLAUSES ACT, S. 9. 40 Bom.L.R. 892.

——*Construction—Executability—Decree containing provision for payment of instalments—Execution application on default in payment—Subsequent compromise relating to manner of payment—Liability of surety under original decree kept on foot—Original decree, if*

a decretal liability of a
It did not provide for

upon the observance of which provisions the judgment-debtors could escape the decretal liability. On the judgment-debtors failing to observe these provisions, an application for execution of the decree was taken out and a compromise was again arrived at modifying only the provisions upon the observance of which the full decretal liability could be avoided. Under the new compromise the liability of the surety for the decretal
kept on foot and
perate to render
created by the

Held, that the compromise was only a modification of

——Construction —Liability for costs —Mortgage suit—Subsequent purchaser—Personal liability for costs. *See* MORTGAGE —MORTGAGE SUIT.

177 I.C. 689=1938 P.W.N. 710.

——*Construction —Reference to nature of suit—*

have regard to the
s proceedings which
which leads to an
anomalous result ought to be avoided (*Niyogi, J.*) CHINTAMAN RAMJIPANT *v.* GOVIND VITHAL

175 I C. 753=11 R.N. 12=A I.R. 1938 Nag. 376.

——*Construction —Scheme for temple —Provision conferring right to vote on Vaishnavas of Tengalai sect—"Untouchable" Vaishnavas—If excluded—Prin-*

the question is not what the legislature meant, but what
has stated
of construc-
and in fact
e framed by
lause which
dharmakar-
vas of the
Thengalai
ishnavas of
s as well if
fic exclusion

of untouchables as such. The burden is upon those who deny that the words are intended to mean something different from what they mean. The fact that for many years (ninety years) no member of the untouchable community ever claimed to be included in the voters' list signifies nothing. From the fact that no claim has been made, it does not follow that had the claim been made and contested, it would have been disallowed. Nor would the fact that the community abstained from making a claim for ninety years destroy their legal rights. "It must be remembered that the necessity of the times often forced on men customs which in later years were not necessary. (*Venkatasubba Rao and Abdur Rahman, JJ.*) SUBBARAYALOO *v.* RANGANATHA MUDALIAR. 1938 M W N 376=47 L.W. 480= A I R 1938 Mad 571=(1938) 1 M.L.J 530.

——*Instalment decree—Default clause—Waiver—Right of decree-holder.*

——*Payment under—Compromise decree providing for instalments to fall due on specified dates—Specified*

Abdur Rahman, JJ.) SURYAPRAKASA RAO *v.* VENKATARATNAM 178 I C 462=1938 M W N. 389= 47 L.W. 388=A.I.R. 1938 Mad 523= (1938) 1 M.L.J. 342

——*Recitals in—Effect of.*

A recital in a decree taken apparently from the plaint and not contained in the operative portion, is merely

42 C W N 837=A I R 1938 Cal 641.

——*Rights under—Determination—Interpretation*

The rights of the decree holder under a decree mainly depend upon the inter[illegible]

C.J. and Digby, J.)

BATTASRAO RAMJI.

——*Setting aside—*

by plaintiff on accou

setting aside decree.

A decree is not liab

of fraud merely becaus

tion on the part of the plaintiff in the

decree was passed, when such misrep

account of ignorance. (*Collister a*

KAZIM ALI KHAN *v.* OM PRAKASH.

172 I C 337=1

ground. (*Sen, J.*) SAGARESWAR CHATTARAJ *v.* BABULAL CHATTOPADHYAYA. 68 C L J. 75.

——*Setting aside—Judgment passed without jurisdiction—Right of suit.*

A separate suit is maintainable for setting aside a decree on the ground that the Court passing had no jurisdiction to pass it. (*Addison and Din Mohammad, JJ.*) INTIZAMIA COMMITTEE *v.* CENTRAL BANK OF INDIA, LTD A.I.R. 1938 Lah. 129.

——Setting aside—Mistake of parties—If ground for setting aside. *See* CONTRACT ACT, S. 20 1937 A.W R 841=1937 A L J. 1095= A.I.R. 1937 All 731.

——*Setting aside—Right of—Person not party to decree*

No person who is not a party to a decree can claim to have it set aside on the ground of fraud or collusion. All that he can claim is that the decree may not affect his rights. (*Addison and Din Mohammad, JJ.*) INTI-

aside during father's life time—Maintainability.

Persons who are parties to a suit are entitled to main

aside does not depend upon whether they have become trustees or not on the date of the suit. There is no reason why persons who are themselves parties to suit and decree should not have the right to sue to obtain a declaration that the decree is void. (*Varadachariar and Abdur Rahman, JJ.*) ARAVAMUDHA IYENGAR *v.* RAMANUJA IYENGAR 48 L W 770= 1938 M W N. 1153=(1938) 2 M L J 982.

sue—Court passing decree ction. *See* C. P. CODE. 42 C.W.N. 375

sue—Ex parte *decree*—*Defects in service of summons.*

Defects in service might be grounds for setting aside an *ex parte* decree under O. 9, R. 13, C. P. Code, but

ty, it is not

DEED.

- Consideration.
- Construction.
- Execution.
- Liability under.
- Validity.

——*Consideration —Burden of proof —Sale deed reciting payment of price—Plea of want of consideration—Onus.*

Where the fact that consideration was paid in the presence of the Registrar is recorded in the sale deed, the onus to prove that consideration did not pass and that the sale deed was fictitious is on the party alleging it to be so (*Wort and Manohar Lall, JJ.*) JOTI LAL SAH *v.* MT. RAMESWARI KUER.

176 I.C. 129 = 4 B.R. 682 = 11 R.P. 51 =

——*Consideration —Onus of*

by Registrar reciting payment of

of—Denial of consideration—Onus.

The onus of proving that a transaction recited in the endorsement on a bond which is witnessed by the Registrar is untrue is on the party who denies the truth of the

statemen

endorser

paid, it

deration has passed It is then for the party

consideration to prove that consideration has not

(*Wort, A. C. J.*) NATHUNI SAO *v.* LACHHMINIA.

1938 P.W.N. 773.

for possession or

to the vendor. (

v. MALHAR. I

——*Considera*

consideration—Impeaching of—Onus.

A person having an undoubted right to convey certain

——*Consideration—Release de*

gagor—Proof of consideration

gagor—Sufficiency.

Where the

passing of consic

the want or inad

Puranik, JJ)

DEED.

BALLABHJI. 176 I.C. 57 = 11 R.N. 24 = A.I.R. 1938 Nag. 30.

——*Construction—Boundaries—Mistake in description of property within—Rule to be observed.*

When the description of boundaries is precise and accurate such description ordinarily will override mistakes or omissions in the description of property within those boundaries. (*Weston.*) RAM NATH *v.* BAHADUR SHAH KHAN. 1938 A.M.L.J. 56.

——*Construction—Boundaries and area—Surrounding circumstances—When can be looked to—Intention of parties—Grant—Extent of property granted—Ascertainment—* Falsa demonstratio—*Doctrine of—Applicability and value of.*

in the deed. Where the terms of the deed are not clear and unambiguous and there is some inconsistency between the different parts of the same document, the only

boundaries are undisputed or can be definitely ascertained, the extent, which is obviously wrong according to

to the

xcess of

area in

l about

y must

be acted upon and cannot be ignored. If, however, it were certain that only a certain extent is given and no

therefore be entirely

The doctrine of

e of very little use

hat any particular

——*Construction — Clause in bond that stated*

l by directors

out of the

DEED.

Held, such a clause could
bring an indebtedness not c
the bond (*Lord Thankert*
v. D M. C. HULME KING
11 B.P.C. 31=

——*Construction—Conveyance—Land conveyed excepting "all coal and other minerals"—Vendee's right*

as the company may consider necessary for the purpose of working and removing the said coal and minerals"

Held, that the words "all coal and other minerals" meant grammatically "all coal and all other minerals." All minerals were therefore excepted and there was no

come within the definition of, minerals are therefore. -excepted, and the vendee is not entitlec
Russell) THE KNIGHT SUGAR CO,
RAILWAY AND IRRIGATION CO.
10 B.P.C. 192=1'

——*Construction—Conveyance or containing both declaration of trust and conveyance.*

A document containing both a declaration of trust and superimposed upon that a conveyance, has the effect of a conveyance. (*Ameer Ali, J*) KANTI CHANDRA MUKHERJEE *v.* JOHN BOISOGOMOFF.
42 C W.N. 937.

——*Construction—Conveyance—"Unto and to the use of".*

The words "unto and to the use of" in a deed are ordinary words of absolute conveyance under the English

favour of grand-daughter—Rules for construction of wills—If applicable.

at present......No person whosoever has any claim to

DEED.

any body have any

a gift of all the
tever that might be.
BAI
10 R N 287=173 I C 145 (2)=
A.I R. 1938 Nag 185.

donor.

Where a person executes a deed of gift giving properties to another person under the belief that the donee fills a certain character, and the language of the

the donee as filling a certain character must in such cases be taken to be merely descriptive of the person to take under the gift deed (*Abdul Ghani and Nageswara Iyer, JJ*) LAKSHAMMA *v.* ERE GOWDA
16 Mys L.J 434=43 Mys H C.R. 352.

——*Construction—Maintenance allowance — Heritability and transferability.*

Some members of the family of a wakif brought a suit against the mutwallis of the wakf on the footing that the wakf properties were still secular and the defendants

——*Construction—Mortgage or lease—Test to decide*

amount is due.

DEFAMATION.

(2) TORT—DEFAMATION.

DYING DECLARATION. *See* EVIDENCE ACT, S. 32 (1).

DEKKAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S 2—*Status waived at the time of decree—Claim to relief in execution—Sustainability.*

An agriculturist judgment debtor who at the time of passing the decree agrees to waive his status, can be allowed to go back upon the agreement and claim all

ment—Evidence to prove—Ad

S. 10-A of the Dekkhan applies only to a transaction rights and liabilities of the wholly or in part under Ch. I privilege which the section of alleging an oral agreement different from the written

and seek to prove an alleged oral contemporaneous agreement to vary or contradict the terms of the rent note. (*Wadia and Divatia, J* CHAND *v.* BALA SAKHARAM.

——S 15-D—*Suit under-ditions.*

A suit under S. 15 D of the D Relief Act will only lie on the pr a mortgage in existence by an ag cannot be entertained when the mortgage has been re-deemed by payment (*Broomfield and S* THIMANNA SUBRA

DISTRICT BOARD—Lease by—Validity—Lease con

wife for a long time, a subsequent association between the parties, during which the parties, though living under the same roof live as strangers, cannot amount to a break i unless the h on which a s *C.J.*) FID

DIVORCE *domicile—S*

DIVORCE ACT (1869), S. 19.

The mere statement of the petitioner, who is 42 years old and is in this country, because he is in the service of the Railway that he intends to continue to reside here is not proof of his domicile in India. (*Addison, Monroe and Din Mohammad, JJ.*) MOODY *v.* MOODY.

174 I C. 992=10 R.L 652=A I.R. 1938 Lah. 293.

——**S. 14, Proviso**—*Applicability—Husband living in adultery treating wife with cruelty and deserting her—Wife marrying Mahomedan husband believing thereby that marriage with former husband would be dissolved—Right to decree.*

Where a woman who has been treated with gross cruelty and has been deserted by a husband guilty of habitual adultery under the most aggravating circum-

——**S. 16**—*Decree for dissolution of marriage by*

the its a ion *J.,* 9= B). *ted.*

For a husband to live in open adultery in the same house with another is certainly cruelty. In a petition

proof—Delay—Effect of.

the petitioner and he must remove all reasonable doubts. If there be a direct conflict of testimony between the two parties who alone know the truth, the difficulties are

DIVORCE ACT (1869), S. 37.

i.e., a real sense of grievance complained of, unmixed with any other subsidiary motive, and, as a necessary proof of such sincerity, requires all reasonable promptitude to be exhibited by complainer in seeking legal redress Delay in itself is not an absolute bar to success in a suit of such nature unless the respondent has suffered in any way by reason of it ; but it has portant bearing on the evidence by which the c impotency is sought to be established and u measure of proof required. The one guiding is that great delay in the institution of a suit description by the husband is an objection t counted for. (*McNair, J.*) BULL *v.* BULL.

A.I R 1938 (

——**S 37**—*Alimony—Gross sum to be paid t Fixing of amount—Principle—Considerations.*

It is difficult to apply any definite principle for the

——**S. 37**—*Or*

alimony made four

of Court to vacate t

Under S. 37 of th any order on the annual income for t passing of the decre to furnish security n judicial separation is, therefore, without jurisdiction. If such an order is not drawn up and filed, the Court has power to vacate being made to RITCHSON I

A I R 1938 Cal 321.

——**S. 37**—*Power of Court to order furnishing of security for alimony—Extent of.*

Under S. 37 of the Divorce Act, the Court has power to make an order on the husband to secure a gross sum or annual income for the wife. In addition it has also the power to order him to pay to the wife such monthly or weekly sums for her maintenance and support as it may think reasonable There is however no power given by the section which enables the Court to compel the husband to secure such monthly or weekly payments (*Panckridge, J*) RITCHSON *v* RITCHSON.

I.L.R (1938) 2 Cal 22=177 I C. 729=11 R.C. 269=42 C W.N. 317=A.I R 1938 Cal. 321.

——**S. 37, Paras. 3 and 4**—*Scope of—Power to substitute order under para. 3 for prior order under para. 4—Power to award gross sum—Nature and extent of wife's right in regard thereto.*

The provisions of paras 3 and 4 of S. 37 of the Divorce Act, are alternatives at the discretion of the Court. They are merely alternative methods of protecting the successful petitioner, the wife. The proviso to the section in terms relates only to the provisions in para. 4 for monthly and weekly payments, and it does not in terms provide for any increase in the amount of the payments. Though a prior order has been made under para. 4, a Court has power on a fresh application to pass an order under para. 3 of S. 37 The correct interpretation of the third para of S. 37 is that

EASEMENT.

v. MR. QUIEROS. **174 I C. 901=10 R O. 280=1938 O.W.N. 513=1938 O L R. 231=1938 O.A. 415=A.I.R. 1938 Oudh 171.**

——**S. 37, Proviso**—*Construction—Power of Court to pass order discharging, varying or suspending original order of alimony as to*

GOODALL *v.* B H. A. GOODALL.

I L R 1938 All 213=174 I C. 330= 270=10 R A 569=1937 A L J. 1363= W R (H C) 37=A I R 1938 All 121.

Proviso—*Discretion—Exercise of—Delay for modification or suspension or discharge*

——**S 40**—*Discretion—Application by guilty party—When to be allowed—Duty of Court to preserve* status *settle-*

0 of the ... discretion must be exercised judicially. It is of course open to a guilty party to make an application under S. 40, but such an application should not be readily acceded to, unless special circumstances exist which make it just and proper to make an order upon the application of a guilty party varying a settlement, the *status quo* should remain undisturbed. The Court should not ordinarily deprive an innocent party of she tak benefit H. T.

EASEMENT.

——*Acquisition—Right of pasturage —Inhabitants of village—How may acquire.*

A right of pasturage by virtue of a lost grant cannot ... as they ... cannot ... of the ... a right

EASEMENT.

right of easement by custom. To establish their right of custom, it must be shown that the custom is immemorial, reasonable, and continued without interruption since i

e, as well as in

obtain and the

ack, J.) ABDUL

2 C.W.N. 1102.

——*Acquisition—Tree standing on plot of land of one—Branches overhanging land of neighbour—Right of former to prevent latter fr*

hanging branches—Adjacent plots of same owner—Sale of one with old tree

of a

land

has consequently no right to prevent a person lawfully in possession of land into which or over which its roots or

cut off the branches overhanging his land (which has not been transferred) would be to violate the maxim

——Customary right—Distinction between. *See* CUSTOM—CUSTOMARY RIGHT. **66 C L J. 270.**

——*Customary right—Proof—Immemorial user, if necessary—Unreasonableness of custom—Test.*

In order to establish a customary right it is not necessary to show that it has been exerci

memorial. It is sufficient to sho

openly enjoyed for such a length of t

by agreement or otherwise, the

customary law of the locality. It

prove enjoyment of the right for a

Where therefore the Mahomedans

their tazias at Muharram in two ghats of a tank for such a length of time as to suggest that the usage has become the customary law of the place, they have a customary right to use the ghats for immersing their tazias. There is nothing unreasonable in the custom

The mere

——*Customary right—Right to use ghats of tank for immersing tazias.*

EASEMENT.

ank for the purpose of customary right and

SABASHA *v.* BABA

I.R. 1938 Nag. 177.

ght to—Partition of joint property.

In order to give an easement of necessity where partition has been made of joint property of several persons, the easement must be necessary for enjoying the share of one of the former joint owners. (*Addison, Ag.C.J. and Din Mohammad, J.*) SHEO NATH *v.* MUGHLA.

40 P.L.R. 787 = A.I.R. 1938 Lah 800.

——*Easement of necessity—When can be granted.*

An easement of necessity cannot be granted merely

solely

are

essity

ways

ham-

40 P.L.R 787 = A.I R. 1938 Lah 800.

——*Extinction—Imposition of additional burden—Effect of.*

The imposition of an additional burden does not have

of easement alto-

LAKHMI CHAND *v.* TARACHAND TOPANDAS

173 I C 380 = 10 R S. 209 = A.I.R 1938 Sind 37.

n easement is not incompati-

hip. (*Grille, J.*) SECRE-

RAO TANKO

A.I R. 1938 Nag 415.

ht of owner of upper land to

r to lower land—Nature and

ownership of land—Acqui

The right of the owner of a higher land to drain off its surplus rain water through the adjacent owner's ground is an incident of the ownership of land in this country, and need not be acquired by long user; and if the owner of the land at the lower level raises any obstruction to the natural flow of the water, he would be

it, collect the water into one body and thus discharge it, and the owner of the inferior tenement is, without the positive constitution of any servitude bound to receive that body of water on his property. (*Rowland, J.*) RAJPATI NARAYAN SINGH *v.* KIRIT NARAYAN SINGH. 173 I C. 599 = 10 R P. 424 = 4 B R 299 =

Pat.L T. 806 = 1937 P W.N. 578 =

A.I R 1938 Pat 71.

ght—Right to discharge water on

The owner of a plot of land on a higher level has, as a natural right and as an incident to the ownership of

EASEMENT.

the plot, the right to discharge water upon an adjacent plot of land lying on the lower level. (*Fazl Ali, J.*)

of enjoyment consistent with each other s convenience To the north of the haveli was a plot which, though

the house which abutted on and opened on to the haveli, had a personal right of ownership in the haveli which he could exercise in respect of the had purchased and which abutted on

Held, that the original owner o enjoyed no rights in the haveli *qua* did convey none to the defendant etc , the defendant had materially and placed an additional burden on the haveli Hence the plaintiffs w relief asked for. (*Dadiba C. Meht*

SALIGRAM *v.* BANSIRAM

11 R S 43=A I R. 1938 Sind 145

40 P L R. 483.

——*Water rights—Public stream—Government putting up dam across public river and using water not for riparian tenement but for filling tank at a distance—Nature of right—Acquisition by prescription—Extent of right—Limit to enjoyment—Right of lower riparian owner to undiminished supply—Accumulation of silt over dam obstructing free flow of water—Suit by lower riparian owner—Limitation—"Continuing wrong."*

Y. D. 1938—41

EASEMENTS ACT (1882), S. 4.

Where the Government as upper riparian owner seeks to use the waters of a public stream not for a riparian

an injunction and damages. The position is the same even when natural

prescriptive right to s also very doubtful whether a prescriptive right could be acquired at all in

... A I R. 1938 Mad 180.

poses cannot acquire a right of way by easement over other lands owned by his lessor. Such a lessee by reason of his being the owner of the materials of the house, would not become an owner within the meaning of S. 4 of the Easements Act, by virtue of the Explanation that 'land' includes also things permanently attached to the earth. The lessee is not in the position of an owner of immovable property under S. 12 for the purpose of a right of way. Though he may be an owner of immovable perty for purpose of acquiring easements under

EASEMENTS ACT (1882), S. 7.

175 I C 227=10 R.A 653=1938 A.L R. 383=
1938 A.W.R. (H C) 319=1938 A.L J. 436=
A.I.R. 1938 All. 293 (F B.)

——S. 7, Ill. (i)—*Right of drainage—Rights obligations of owners of upper and lower lands—P ciples*

There is a natural right of drainage from hi lands to lower lands of water flowing in the usual cc of nature and in undefined channels. This princip embodied in Ill. (i) to S 7 of the Easem Act. But the right of the su quite absolute. It would not fo right to introduce water which Further there is no obligation up lower land to submit to an artific from his neighbouring lands. When land is so located that water naturally or in the course of ordinary agricultural operations descends from the estate of the superior proprietor to the inferior estate, the owner of the latter cannot do anything to prevent the

——S. 7, Ill. (i)—*Right to flow wa higher level—Right to obstruct.*

The right of every owner of upper

the dominant heritage. As such the user of a particular

ELECTRICITY ACT (1910), S. 2.

movable property—

An easement of light and air through apertures or windows in a wall cannot be acquired by prescription,

1938 A W.R. (H C) 795=1938 A.L J. 1142.

——S. 15, Expl II—*User by father of plaintiff's vendor for less than the statutory period—Son, not using for 6 years after father's death—Plaintiff's user after*

cquired a right of easement for there had been an interruption, and an intention to cease to enjoy the right. *Bennet, A.C.J. and Verma, J.*) FAIZULLAH EBADLLAH *v.* BADRUZZAMAN. I L R 1938 All 840=
178 I C. 25=1938 A.L R 838=
1938 A.W.R (H.C.) 568=1938 A L J. 867=
A.I.R 1938 All 587.

——S. 20. ... aintain dam across
to tank through
of channel or to
See EASEMENT—
46 T. W 862

——S. 60—... *made by grantee*

only to reside
by them would
ice S 60 of the
ation. (*Ismail,*

178 I C 135=11 R A 43=1938 A L R. 572=
1938 A L J 465=1938 A W R (H C) 280=

ELECTRICITY ACT (1918), S. 9.

——**S. 2 (c) and R. 106**—"*Consumer*"—*Mea... of.*

In order to hold that a person is a "cons defined by S. 2 (*c*) of the Electricity Act, it wou *facie* be enough to prove either that energy was for the use of that person, or that that perso owner or occupier of premises connected up licensee's electric system. If either of these that person is a consumer under R. 106 of the rule. (*Rowland, J.*) BHAGALPUR ELECTRIC SUPPLY CO. LTD. *v.* HARI PRASAD SAHA 172 I C. 940= 4 B.R. 203=10 R P 365=39 Cr.L.J. 206= 18 Pat L T. 986=A I R. 1938 Pat. 15.

——**S. 2 (c)**—"*Consumer*"—*Manager of company if.*

Where the registered consumer and the person supplied with the energy is the proprietor of a company, the manager of the company cannot be held to be a consumer within the meaning of S. 2 (*c*) of the Electricity Act. The premises of the company are not the premises

sation or rent

The Electricity Act of 1913 does not authorise a

persons or that the persons were owners or occupiers of

A.I.R. 1938 Pat 15

——**Ss 39 and 44 (c)**—*Offence falling under both sections—Charge under S. 39—Propriety.*

Where an offence falls under both Ss. 39 and 44 (*c*)

ESTOPPEL

19 Pat L T. 343=1938 A L R. 309=10 R P C. 250= 4 B R 490=39 Cr L J. 452=67 C L J. 161= 43 Bom L.R.

——**Ss 39 and 44 (c)**—*Scope and effect—Charge under—Presumption of abstraction of and tampering with meter—Conditions for raising of—Accused not proved to be consumer—Effect of.*

S. 39 of the Electricity Act dispenses with direct proof ... person, but does not ... held liable for the con- ... also enables a presump- ... circumstances, that the ... ly registering itself has ... used by the consumer in

(*c*) of the Act. (*Dhavle, J.*) BHAGALPUR ELECTRIC SUPPLY CO., LTD. *v.* PROFULLA KUMAR

1938 N.L J. 366.

ESTOPPEL. *See also* EVIDENCE ACT, S. 115.

ESTOPPEL.

——Acquiescence—Conduct—Malabar tarwad—Acquisition by Karnavan in names of members of thavazhi—Several succeeding karnavans acquiescing and not challenging claim of thavazhi—New Karnavan claiming acquisition on behalf of tarwad after lapse of many years—Maintainability of claim. *See* MALABAR LAW

in revision against order—Competency.

It is a well known rule that a party cannot be allowed both to approbate and reprobate. If a party has adopted an order of the Court and acted under it, he cannot,

Held, that the revision application was incompetent and the plaintiff was not entitled to attack the order in

—Doctrine of election.

The law is sufficiently clear that a party who seeks the assistance of the Court is not entitled to approbate and reprobate or blow hot and cold. The doctrine of election is not confined to instruments
one time that a transaction is
some advantage to which he
the footing that it is valid, an
it is void for the purpose of se
tage. A person who has cho
Court cannot subsequently
(*Burn, J*) SREERAMULU *v*
1938 M W
(1938) 2 M L J. 835=

——Conduct — Represe
Declaration of final dividend-
ing insolvency terminated a
Court—*Acquisition by insol*
later—Right
the hands of
INSOLVENCY

——Conduct — Tenant
dispossessed by some only of
under wrong section of Act—
by same co sharers against
latter that plaintiffs are not
lity—If barred. *See* AGRA TENANCY ACT, ss. 44 AND 99. 1938 R D. 163=1938 A W R (B.R.) 99.

——Equitable estoppel—Representation—Agreement of permanent lease by limited owner effected verbally—

ESTOPPEL.

——*Estoppel by conduct, neglect or representation—Basis of rule—Pledge of Railway receipts—Pledgee handing them over to pledger in the course of business—Repledging of them—Original pledgee, if estopped.*

Though estoppel is described as a mere rule of evidence, it may have the effect of creating substantive

estoppel is based on the existence of duty which the person estopped owes to the person led into the wrong belief or to the general public of whom the person is one. There is a breach of duty if the party estopped has not

railway receipts from the Port Trust and storing in the bank's godowns. The bank did not put its stamps on the railway receipts. The merchant fraudu-
bank *B* and
A brought
k *B* raised

Held, that the plea of estoppel could not be availed of. Bank *A* did not owe any duty to bank *B* in the matter. There was no relationship of contract or agency. There was also no representation by bank *A* which had

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tt.)
OF
)=
1938 A.L R 100=10 R P C 169=1938 P.W.N 162=

Judgment—Conditions.

ESTOPPEL

Abdur Rahman, J.—There can be no estoppel by judgment or decree apart from the doctrine of *res judicata* unless the same matter is found to be in issue in the former trial as that now in q... judgment was rendered on the m... *and Abdur Rahman, JJ.*) R... KRISHNAYYA. 1 ...

47 L.W. 574.

——*Knowledge of execution of decree—Failure to* ...

... execution pro...

A I.R. 1938

——Landlord and tenant — Buildi... by tenant—Landlord if estopped from pleading non-transferability. *See* LANDLORD AND TENANT—TRANSFERABLE TENANCY. 17 Pat 358.

——Lease—Not by all co sh... —Ejectment— Lessor if est... AND TENANT—LEASE. 1

——*Point of law—Admiss... nature of.*

Counsel waiving objection ... estop his client from raising the ... PANNA LAL *v.* JAIN BANK OF ...

178 I.C. 288

——*Suit in ejectment of ... Description of tenant as occupa... rate as estoppel.*

In a suit to eject a tenant as a non occupancy tenant, ...

1938 N L J. 181

——*Point of law—Admission of counsel.*

EVIDENCE.

Account books
Admissibility.
Age
Appraisement Record.
Certified copy.
Child witness.
Defendant as plaintiff's witness
Heading of deposition
Judgments.
Marriage
Misappreciation and Misapprehension.
Partition entries.
Proof.
Register of births and deaths.
Thak and Revenue Survey Maps.

EVIDENCE.

——*Account books—Failure to produce—If fatal.*

Although accounting *qua* accounting is not a part of the cause of action in a suit, omission to produce ... ugh the burden were ... circumstances prove ... *Bose, J.*) KALYAN J... (' 675=11 R N 65= A I.R. 1938 Nag. 254.

——*Admissibility—Deposit of jade by A with B*—

... documents were not raised in the trial Court and there ...

——*Admissibility—Statements in prior suit.*

In a suit the point whether plaintiff's father *M* was bandhu of *J* was in question. The plaintiff produced a ...

1938 A.W.R (H C.) 533=10 R A. 132= 1938 A.L R. 662=A I R 1938 All. 443

——*Appraisement record—Requisites to be proved.*

Before a record of appraisement can be treated as in ... y be imputed it was made with ... nless the *Raiyat* ... be *danabandi* by signing the record of appraisement, or unless it is demonstrated that the *danabandi* was carried out in something of the manner of a proceeding in arbitration, the landlord is required to prove not only that the *danabandi* was made but that the estimate of outturn was correct. (*Courtney Terrell, C. J., James and Manohar Lall, JJ*) PRATAP NARAIN JHA *v* RAMA-

...

The doctrine of the onus of proof is merely academic where both parties give evidence. Where there is evidence on both sides, the question of onus does not arise

EVIDENCE.

at all, and the Judge has to determine the issue between the parties on the evidence before him. (*Wort, A. C. J.*) NATHUNI SAO *v.* LACHHMINIA

1938 P. W. N. 773.

——*Certified copy—Proof—Deed.*

… actorily esta- … (*Bose and* … HASSANBI. … I. B N. 41= A I R. 1938 Nag. 152.

——*Child witness—Unsworn testimony- Admissibility—Oaths Act, S. 13.*

In the case of an unsworn testimony of a young child, that evidence is admissible. S. 13 of the Oaths Act …

… *of materials for cross-examination—Stage.*

It is not till the evidence in-chief of a witness is given that a pleader or advocate can decide what material he will use for cross-examination, and it follows that he is by no means bound to declare the names of the witnesses whose statements to the police he intends to …

——*Criminal trial—Disallowance of questions—Ruling as to—Duty to record.*

… as refused, it is … propriety with … from the consideration of a Court of first instance. (*Roberts, C. J. and Dunkley, J.*) BRAHMAYA *v.* KING.

A.I R. 1938 Rang. 442.

——*Defendant as plaintiff's witness—Calling of—Tactics condemned.*

Where the plaintiff refrained from giving evidence on his own behalf and adopted instead the tactics of calling the defendant as a witness for the plaintiff, with the usual result that important features of his case were denied by his own witness, their Lordships condemned this practice and approved of the course taken by the High Court in treating the plaintiff as a person who put the defendant forward as a witness of truth (*Sir George Rankin.*) SHATRUGAN DAS *v.* BAWA SHAM DAS. 172 I.C. 633=1938 O L.R 42= 47 L.W. 124=1938 A.L.R. 66=4 B.R. 238= 1938 A.W.R. (P.C.) 40=10 R.P.C. 152= 1938 M.W.N. 614=32 S L.R. 308= (1938) O W.N. 48=A.I.R. 1938 P.C 59 (P.C.).

——*Heading of deposition—Entry in—Proof of religion*

… a certain person was a … ain case the person was … e entry in the heading of … hat he was a Burmese … g merely in the heading … much importance could not be attached to such entry. (*Baguley and Sharpe, JJ.*) MA TIN *v.* MA E NYUN 176 I.C 242= 11 R.R. 46=A.I.R. 1938 Rang. 81.

——*Judgments—Finding of fact in—Binding effect of.*

… (*Smith, J.*) DURGA BUX SINGH *v.* SURESH BUX 1937 O.W.N. 1221.

… *apprehension'* — … and demonstrable … misappreciation … by no means so cap- … *ruer and Niyogi, JJ.*) … 2=177 I C. 605 (2)= … 148=39 Cr L J. 917= … A I R. 1938 Nag. 394.

… *identiary value of—* … *is non-occupancy holding in qurra of some co sharers—Effect—Right of latter to sue in ejectment.*

Entries in partition, while not constituting *res judi-* …

——*Register of births and deaths—Entries in—Value of.*

Entries of the names of persons in a register of births or deaths or marriages cannot be positive evidence of the birth, death or marriage of such persons unless their identity is fully proved. (*Lort Williams, J.*) HEMANTA

EVIDENCE.

KUMAR DAS v. ALIANTZ INSURANCE COMPANY.
177 I C. 517=11 R C. 253=
A.I.R. 1938 Cal. 120.

——*Thak and revenue survey maps—Value of.*

The Thakbust map which preceded the revenue survey was intended to guide the revenue surveyor who

A statement of a person believed but not proved to be dead is no doubt not admissible under S 32 of the Evidence Act, but

under S 8, to a lit

the party. It howev

contained in it (

ABDUL AZIZ v. S

—— Ss 8 and

apprehending danger—Admissibility

GOLOKE BEHARY TAKAL v. EMPEROR.
I.L R. (1938) 1 Cal 290=173 I C. 65=
10 R C 441=39 Cr L J. 161=
66 C.L J. 225=42 C.W.N. 129=
A I R. 1938 Cal 51

——S 8, Illus. (j) and (f)—*Accusation by woman against man for attempt to ravish—Statements by her to witnesses—*

A woman b
man alleging t
considered the
witnesses afte
of attempt.
the woman wa
kept silent an

woman was to make statements.

EVIDENCE ACT (1872), S.13.

the confession of a co accused. Nor can it be admitted under S. 10, because S. 10 applies to acts done in furtherance of a conspiracy or which bear some relation to the conspiracy and does not apply to a confession made after the conspiracy, and the acts done in pursuance thereof were at an end. S. 10 cannot be extended

tements of third persons or
dmissibility and evidentiary
-Necessity—Nature of corro-

as for instance when
id in the presence of
statements of third parties made in the absence of the persons implicated

——S. 10—*Statement by deceased in dying declaration as to conspiracy—Admissibility and value of—Corroboration.*

EMPEROR. 175 I C. 99=39 Cr.L J. 545=
10 R S 282=A.I R. 1938 Sind 94.

EVIDENCE ACT (1827), S. 26.

Mehta and Lobo. A. J.Cs.) BACHOO KANDERO *v.* EMPEROR. 32 S.L.R. 185=172 I.C. 968=10 R.S. 188=
39 Cr L J. 239=A.I.R. 1938 Sind 1.

——S. 26—*Applicability—Illegal arrest by police-officer—Confession by arrested person while in custody of arresting officer—Admissibility.*

S. 26 of the Evidence Act is not inapplicable in cases where the arrest by the police officer of person making the confession is illegal. Whether the arrest is legal or illegal the mischief which the section is intended to avert remains all the same, and a confession made by the arrested person while in the custody of the police-officer is inadmissible under S. 26 The illegality of the arrest does not affect the operation of S. 26 (*Dhavle and S.C. Chatterji, JJ*) EMPEROR *v.* MUSSAMMAT JAGIA.
17 Pat 369=174 I C. 524=10 R D. 531=
39 Cr L J. 428=4 B R 451=1938 P.W.N. 293=
19 Pat L.T. 268=A.I.R. 1938 Pat 308.

——S. 26—"*Custody of a police-officer*"—*Meaning of—Police-officer arresting accused and leaving him in charge of private individual during temporary absence—Accused, if in custody of police-officer.*

The "custody" of a police-officer for purposes of S. 26, Evidence Act is not mere physical custody A person may be in the custody of a police-officer, though the latter may not be physically in possession of the person of the accused making the confession Once an accused person is arrested by a police officer and is in his custody, the mere fact that for some purpose or other the police-officer happens to be temporarily absent and during such absence leaves the accused in charge of a private individual, does not terminate the custody of the police-officer. The accused must be deemed to be still in the custody of the police-officer. (*Dhavle and S.C. Chatterji, JJ.*) F[illegible]

39 [illegible]

——S[illegible]
police-o[illegible]

A village chowkidar is a police-officer [illegible] meaning of S. 26 of the Evidence Act, thougl[illegible] not be one within the meaning of the Cr. [illegible] respect of the powers to be exercised by a po[illegible] for purposes of that Code (*Dhavle and S. C.* [illegible] *JJ.*) EMPEROR *v.* MUSAMMAT JAGIA.
17 Pat. 369=174 I.C. 524=10 R P. 531=
39 Cr.L.J [illegible]
1 [illegible]

——S. 27– [illegible]
Person in polı[illegible]
Statement by—[illegible]

S. 27 of the Evidence Act is no doubt restricted to persons in custody of police; but there is no reason why it should not apply also to persons who are in actual police custody although that custody has been ordered by a Magistrate. There is nothing in such a case to offend against the principle of S. 27, namely, that portions of a confession made to the police leading to the actual discovery of facts can safely be proved (*Rowland and Madan, JJ.*) RAM BABU JADAV *v.* EMPEROR. 173 I C 418=4 B.R. 266=
10 R P. 402=39 Cr L J. 302=
18 Pat L T. 964=A I R. 1938 Pat. 60.

——S 27—*Applicability—Information leading to discovery of acts really given by person other than accused—Subsequent statement by accused and actual discovery by him—Relevancy.*

Where the discovery of facts is in consequence of information given not by the accused by other persons than the accused, and a very slight trouble would suffice

EVIDENCE ACT (1872), S. 30.

to discover those facts without any intervention whatever by the accused, anything which the accused might say in the matter is not admissible in evidence. The fact that the actual discovery is done by the accused is immaterial so long as the real information which leads to the discovery comes from a person other than the accused. (*King and Lakshmana Rao, JJ.*) VENKADU *v.* EMPEROR. 1938 M.W N. 1272.

——S. 27—*Statement leading to discovery of facts—What amounts to—Police officer already aware of what accused would say but procuring witness and then taking statement—Propriety—Admissibility of such statement.*

Under S. 27 of the Evidence Act, it is only when the information given by a person in custody leads to the discovery of any fact that such information would be admissible. Where the police officer knows beforehand precisely what the accused is going to say, and procures the presence of witness to witness the making of the statement of the accused and then the accused is brought out of custody and makes a statement and afterwards certain facts are discovered, it cannot be said that anything is discovered in consequence of the statement made by the accused to the police officer in the presence of the witnesses. This is mere farce and this manner of manufacturing evidence ought to be deprecated S. 27 of the Evidence Act is not designed by the Legislature to encourage proceedings of this sort. (*Burn and Lakshmana Rao, JJ.*) PUBLIC PROSECUTOR *v.* SUBBA REDDI. 1938 M.W.N. 1118=
48 L W. 780.

——S. 29—Scope—If controlled by S. 164, Cr. P. Code—Record of confession as dying declaration without due warning being administered—Admissibility. *See* CR. P. CODE, S. 164. 1937 M.W.N. 1325.

——S. 30—*Confession of accused—Conditions of ad*[illegible]
y.

[illegible] f the Evidence Act requires that the confession [illegible] ccused should be one affecting its maker, that [illegible] incriminate its maker or it is of no value [illegible] co-accused; but the law does not go so far as [illegible]

——S. 30—*Confession of accused—If evidence against other accused.*

[illegible] o accused can only be taken [illegible] e other accused under S. 30 [illegible] ch confession cannot take [illegible] not evidence, against the [illegible]

GOUNDAN *v.* E[illegible]
39 Cr L.J. 89 [illegible]

——S. 30—*Confession of co-accused—Evidentiary value.*

It is not quite clear as to what is the exact meaning of "tainted evidence"; whether it means that the person giving the evidence is tainted morally; or whether it means merely that he is a person on whose word reliance cannot be placed. As regards an approver, there is the fear that he is giving evidence in order to save his skin and therefore that he is liable to make statements which are not true if he thinks they will be for his benefit. But as regards the confession of a co-accused, one cannot call this, tainted evidence, for the same reason. A person making a confession does so deliberately and after having been warned solemnly by the Magistrate of the consequences of making a confession and knowledge that he may be convicted thereon,

if he still persists in his purpose and makes a confession, the statements tha[illegible] tainted statement [illegible] because he is an [illegible] criminal offence, [illegible] sarily and always [illegible] that because the [illegible] must be believed. In such case it has to be considered whether the confession is a true one, whether there are any circumstances which suggest that it is false or that some of the statements made therein are also false The Court may take the confession of a co accused person into consideration against the other co-accused; that is to say, the Court can only treat a confession as lending assurance to other evidence against a co-accused (*Mackney, J.*) NGA MYA *v* EMPEROR.

1938 Rang L R 30 = 174 I.C. 947 = 39 Cr L J 481 = 10 R R. 449 = A.I.R 1938 Rang. 92

——S. 30—*Confession of accused—Sufficiency to base conviction—Corroboration—Nature and extent of.*

[illegible]

——S 30—Co [illegible] sibility. *See* EVIDENCE ACT, S 10.

A I R. 1938 Sind 94.

——S. 30—*Joint trial of two persons, one for rape and other for abduction—Confession of one—If admissible against other.*

When two persons are jointly tried, one for the offence of rape of a girl and the other for the abduction of that girl, they are not tried for the same offence. Consequently a confession made by o[illegible] himself and the other is not a[illegible] against the other under S. 30 o[illegible] (*Derbyshire, C J and Mukh*[illegible]) CHANDRA *v* EMPEROR.

39 Cr.L J. [illegible]

42 C.W.N. 814 = [illegible]

——S. 30 — *Retracted confe*[illegible] *against co accused—Corroboration* [illegible]

A retracted confession of a co-[illegible] in evidence against his co accused [illegible] dence is to seek corroboration b[illegible] based on it What the nature c[illegible] should be will depend on the fa[illegible] case (*Varma and Rowland,* [illegible]) MANGRU KISAN. 16 Pat 612 = 19 Pat L T. 104 = 1938 P.W.N 25 = 4 B R 284 = 173 I C. 507 = 39 Cr.L J. 325 = 10 R P. 418 = A.I.R. 1938 Pat. 108.

——S 30—*Retracted confession—Value of, against co-accused.*

A retracted confession may be valuable evidence against the accused making the conf[illegible] very little value against a co accused. [illegible] *J.*) SINGHA *v.* EMPEROR. 1[illegible]

39 Cr.L J. 49[illegible]

40 P.L R. 58 = A.I.R. 1938 Lah 252.

——S. 30—*Retracted exculpatory confession—Admissibility against co-accused.*

A confession by an accused of an exculpatory nature [illegible]

——S 31—*Admissions by party—How far binding.*

An admission made by a party is not binding on him and its only effect is to shift the burden as against him He is at liberty to prove that his admission was mistaken or untrue and is not estopped or concluded by it unless another person has been induced by it to alter his condition. (*S. K Ghose and Patterson, JJ.*) BROJENDRA MOHAN MOITRA *v.* MAHARAJA SRISH CHANDRA NANDI. 67 C L J. 495.

——S. 31—*Admissions—Value*—Bona fide *mistake—Correction—Permissibility.*

Admissions are not conclusive proof, and though [illegible]

[illegible] S. 8 AND 32. 40 P L R. J., and K. 1.

[illegible] 32—*Dying declaration—Gunshots in all* [illegible] *declaration.*

[illegible] ids in the liver, [illegible] e haemorrhage [illegible] deal of shock [illegible] ecomes uncon- [illegible] of making any dying declaration. (*Young, C.J. and Monro, J.*) ANANT RAM MAYA RAM *v* EMPEROR.

174 I C 989 = 10 R.L. 653 = 39 Cr L J 512 = A.I.R. 1938 Lah. 262.

——S 32—*Dying declaration—Wound puncturing liver, lung and stomach—Capacity of victim to make declaration.*

Where a deceased received a spear wound which [illegible]

——S 32—*Oral evidence of verbal statements—Admissibility—Witness interested in result of litigation*

S. 32 of the Evidence Act speaks of statements both written and verbal, and a Court cannot refuse to admit oral evidence of a verbal statement which fulfils the [illegible]

42 C.W.N. 359.

——S. 32—*Statement by murdered person about motive for murder—Evidence of—Admissibility.*

EVIDENCE ACT (1872), S. 32.

Statements made by a murdered person prior to the murder as to
falling under
such stateme
the motive fo
Rao, JJ.)
177

——S 32 (1)—*Applicability—Admission of dying declaration—Method of proof.*

The dying declarations of a deceased person are admissible under S. 32 (1) of the Evidence Act. The

evidence by heart before he enters the witnessbox or no dying declaration could be proved in a satisfactory manner at all. (*Almond, J C. and Mir Ahmad, J.*) HANIF GUL *v.* EMPEROR.

176 I C 471 = 11 R Pesh. 9 = 39 Cr.L J. 744 = A.I R. 1938 Pesh. 33.

——S 32(1)—*Dying declaration—Conviction if can be based on.*

ment, made as a rule in the absence of the accused with

speak, on being questioned regarding
a dying declaration by signs of har
the person recording the dying decl
that the same may be admissible i
record the precise nature of the signs
person is stated to have made. It is not his function to record merely his interpretation of the signs, which should be left to the tribunal. (*Courtney Terrell, C. J. and Manohar Lall, J.*) DARPAN POTDARIN *v.* EMPEROR.

173 I.C 833 = 4 B R. 342 = 1938 P W.N 266 = 10 R P. 456 = 39 Cr.L J. 384 = A.I.R. 1938 Pat. 153.

EVIDENCE ACT (1872), S. 32.

——S. 32 (1)—*Dying declaration—Value—Prefer-*

1938 A. Cr. C. 143 = 1938 O.A. 924 = 1938 A.W.R. (C C.) 108.

——S 32 (1)—*Statements long prior to death—Ad-*

——S 32 (3)—*Part of statement against pecuniary interest—Entire statement, if admissible.*

Where a part of a statement is against the pecuniary or proprietary interest of the person making it within the meaning of S 32 (3) of the Evidence Act, and the rest of the statement is necessary to explain the part which is against interest, the statement as a whole would be admissible. Where during a quarrel between
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perty was a statement against her pecuniary or proprie-
t explained
ie mortgage,
admissible
AR SAHA *v.*
C W N. 359.
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. RAM RAJ
R. (H C.) 776.
rd as to events

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it relates to
ty. (*Skemp,*
N.
1 R.L. 220 =
938 Lah 303.
ility—Condi-

vidence under

——Ss. 32 (5) and (6)—*Pedigree—Admissibility—Conditions of.*

Before a pedigree or table of relationship can be admitted in evidence, it must be shown that it is a statement made by a person having special means of knowledge and made before the question in dispute had arisen. (*Abdul Ghani and Singaravelu Mudaliar, JJ.*)

EVIDENCE ACT (1872), S. 32.

NANJUNDEGOWDA *v.* MUDDAPPA
16 Mys.L J. 137=

——S. 32 (6)—"*Pedigree*"—*M*

As ordinarily understood, a pe
family record handed down from generation to genera-

JJ.)
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The term "representatives in interest" in the proviso to S 33 of the Evidence Act would inc
have derived title from another. It
sons having the same interest in the
the litigation and comprises all persons on whose behalf, though not in their names or as representing them, the previous litigation was carried on In other words, all persons whose rights are litigated *bona fide* by a person virtually on behalf of a class, though they themselves are not *co nominees* on the record, will be considered in

ter is to keep a fairly full record of the person whose

A.I.R. 1938 All. 243.

——S. 36—*Revenue Maps and surveys—Evidentiary Value.*

Maps and surveys made in India for revenue purposes are official documents prepared by competent persons, and with such publicity and notice to persons interested

relevant, but they are not by themselves sufficient evidence to charge any person with liability. It is the obvious duty of the person relying on such entries to produce corroborative evidence in support of such entries. Any relevant fact which can be treated as evidence within the meaning of the Act would be sufficient corroborative evidence furnished by the entries in books of account if true. (*Ismail, J.*) NARAIN DAS *v.* GHAZI RAM GOJAR MAL.

——S 36—*Thak map—Evidentiary value*

The Thak map is evidence of possession at the time when it is made and as such evidence of title. (*Syed Nasim Ali and Henderson, JJ.*) SITANATH SAHA *v.* MANORANJAN ROY. 68 C.L.J. 293.

——S 41—*Construction and scope—Judgment in rem—Meaning and effect of—"Competent Court"—If excludes foreign Court—Foreign judgment as to validity of will—If conclusive against legatees in British*

—*Acknowledgment of legitimacy.*

cited within its territory, such judgment is treated by the

cipal Committee—Admissibility.

question as to its own law and in a matter upon which it
upon to adjudicate, the judgment of a foreign
here is no rule of international law which
British Indian Court to accept the judgment
preme Court of His Britannic Majesty, Alexandria, as the law of domicile of a deceased, which
domestic law of British India, as binding

official duties. Such documents are, therefore, admissible in evidence, although no presumption of correctness

EVIDENCE ACT (1872), S. 42.

limits of that Court's
Act cannot be read
international law a
clearly deals with wh
though that expressic
words "competent (
any country which i
rem. The Alexand,
competent to pass a
deceased person wh
at the time happen
respect of assets ou
Alexandria Court can have
rem. "Court" in S. 41, is
British India A foreign C
operation of S 41. Nor ca
as a judgment *inter partes*
P Code, on persons who have not been parties to the suit in that foreign Court. The question as to the validity of the will made by the deceased decided by the Alexandria Court in the suit to which the executors alone were parties can be agitated by the legatees in a suit in British India, when the legatees have not been parties to the foreign suit. Nor can the executors whose title was successfully challenged by a legatee in that suit be said to have properly represented

a matter which need not have
which was not material or which
into question or which was only
The only judgment *in rem* as to s
judgment pronounced not only a
domicile but by the Court of do
J. and Wadia, J.) MESSA *v.* M
I L R 1938 Bom. 529 = 177 I C 836 = 11 R B 121 = 40 Bom.L.R. 571 = A.I.R 1938 Bom 394.

——S 42—Decision as to custom—Relevancy—Value. *See* EVIDENCE ACT, S. 13.
40 P.L.R 29

——S. 47—*Scope—Statement by witness that certain document is in handwriting of known person—Admissibility and value of—Document not before Court—Effect—Witness—If must state source of knowledge at*

in the first instance that he knows the handwriting. It is the duty of the opposite party to explore in cross-examination the sources of his knowledge, if he is not satisfied with the testimony of the witness as it stands. Nor would the fact that the document is not before the Court render such evidence inadmissible. (*James, J.*) JAGDISH DAS *v.* EMPEROR.

proved
bility to prove original.

A copy of a copy, in the absence of proof of comparison with the original is not good secondary evidence of the original, and is not good evidence of the original

EVIDENCE ACT (1872), S. 74.

A.I.R. 1938 Cal 702.

Scope of—If state the English-Suit on—Proof of execution witness—If to be called before

It is not the law that a plaintiff in a suit on a mortgage bond should call all the attesting witnesses to the bond who are alive before he can take advantage of S 71 of the Evidence Act. It is incumbent on the plaintiff to call at least one witness, and if that witness denies or does not recollect the execution of the document, then the execution may be proved *aliunde.* Whatever the English law may be Ss. 68 to 71 of the

sion made for the purpose of, or having reference to the suit, and made either in the pleadings or during the course of the trial, and not an admission antecedent to the suit made in some other transaction of the party. (*Pandrang Row and Venkataramana Rao, JJ.*) SHEIK DAWOOD ROWTHER *v.* RAMANATHAN CHETTIAR.
1938 M.W.N 1203.

——S. 73—*Comparison of signatures—Expert evidence—If necessary—Power of Court to form opinion*

the Court is entitled to form its own opinion after comparing the signatures on the documents produced in Court and the admitted signatures. Such procedure is expressly contemplated by S 73 of the Evidence Act. (*Courtney-Terrell, C.J. and Manohar Lal, J.*) NARAYANASWAMY *v.* EMPEROR. **17 Pat 15 = 1938 P W N. 338 = 19 Pat L.T. 432.**

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——S. 74—"*Public document*"—*Finger print slip—Extract from jail register—List of previous convictions—Admissibility to prove earlier convictions—Identity of accused with previously convicted person—Proof.*

A finger print slip taken in pursuance of a statutory duty cast upon police officers after a convict enters the jail is an act of the executive under S. 74 of the Evidence Act and is therefore a publi[illegible] also the jail register which is writte[illegible] authorities in the ordinary course of [illegible] as a convict is admitted into jail is a [illegible]

[illegible]

impressions taken But where the finger prints were taken elsewhere or taken in a place not the place of conviction, and taken sometime after the conviction, it cannot be said that the identity of the convicted person with the accused before the Court [illegible] A calendar extract showing previo[illegible] be confirmatory of the other evide[illegible] identity of the convicted person in [illegible] the accused before the Court. But the list of previous convictions contained in the finger print slips cannot be said to be satisfactory evidence of the previous convictions recited therein (*Horwill, J*) ARUMUGAM *v.* EMPEROR 1938 M W N 595=48 L W. 639=A.I R 1938 Mad. 858.

——S 76—*Copy of talukdhari Sanad not sealed—*[illegible]

[illegible]

of India is authorised by law to [illegible] But if there is no evidence to the [illegible] authorised, the Court cannot make [illegible] when other necessary formalities ha[illegible] out Accordingly a copy of a sanad [illegible] other formalities but is not sealed [illegible] uncertified and is admissible in evidence (*Zia ul-Hasan and Hamilton, JJ.*) SRI RAM *v.* MAHOMED [illegible]

ed that the entry was made in ordinary bahi and not on stamped paper though required by law as such. Moreover there was no evidence by plaintiff to show that the defendant was in possession of the bahi and was withholding it though called upon to produce it.

Held, that no presumption under S 89 could be drawn under the circumstances and as the entry was made in [illegible]

[illegible]

Nature of presumption raised.

The circumstances that a document purporting to have been signed by a certain person is among official records is no proof that the document is 30 years old and [illegible]

[illegible]

draw.

The presumption under S. 90 of the Evidence Act is not one which the Court must draw The Court has a discretion in the matter. (*Bennet and Ganga Nath, JJ*) JALESHWARI PRATAP NARAIN SINGH *v.* PATESHWARI BAKSH SINGH.
175 I C 594=10 R A. 705=1988 A L R 456=1938 A.W.R. (H C) 284=A.I R. 1938 All. 345.

——S. 90—*Presumption under — Discretion of Court.*

[illegible]

——S. 90—*Presumption under—When to be raised—Discretion and duty of Court in raising.*

[illegible]

EVIDENCE ACT (1872), S. 91.

duced from proper custody. (*Wassodew and Thakor, JJ.*) RUDRAGOUDA *v.* BASANGOUDA.

175 I C. 361 = 10 R B. 538 = 40 Bom.L R. 202 = A I R. 1938 Bom. 257.

——S 91—Applicability—Suit for redemption of mortgage and possession—Mortgage for over Rs. 100 not registered — Oral evidence — Admissibility ...

...does not prevent the revocation ... an unregistered document. (*Wads...* YOON...

——...

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ISMAIL ... 1080.

——S. 91—*Partition — Unregistered deed—Other evidence, if inadmissible.*

Where an unregistered partition deed is relied upon by the defence in a partition action, though the deed may be inadmissible in evidence, being unregistered ...

... a cause of action, and the fact that there is a loan can never be a term of the contract contained in the ...

... depends on the ... was executed. ...

ment or if the note does not embody ... contract the true nature of the transa... ed. But if the promissory note emb... the terms of the contract, no suit on the debt will lie as S. 91 of

EVIDENCE ACT (1872), S. 92.

the Evidence Act and S. 35 of the Stamp Act bar the way. The fact that the execution of the promissory note is contemporaneous with the borrowing cannot, however, exclude the possibility of the ... been ... paym...

...on—*Unregistered ... to prove title— ... Admissible ...*

——Ss 91 and 92—*Scope and effect of—Oral evidence that document not intended to be acted upon—Admissibility.*

S 91 of the Evidence Act only excludes oral evidence as to the terms of a written contract. S. 92 only excludes oral evidence to vary the terms of the written contract, and has no reference to the question whether ... terms set forth ... section to ...

——S 92—Applicability— Pre-emption suits. *See* PRE-EMPTION—CIRCUMVENTION OF.

... absence or failure of consideration for a document could always be adduced under proviso (1) of S. 92, even if the document had mentioned any ...

——Ss 92 and 94—*Intention of parties—Oral evidence—Admissibility—Conditions.*

EVIDENCE ACT (1872), S. 92.

Where the surrounding circumstances are not so compelling as to lead inevitably to the conclusion that there had been an inadvertent misdescription of property in a mortgage deed in suit and that the property which was intended to be mortgaged was something over and above what was actually described and specified in the document, the mortgagees are barred by the provisions of Ss. 92 and 94 of the Evidence Act from showing that the intention of the p
appears from the terr
(Callister and Batpe
SHUJAAT-MAND KHA
1938 A L J 47
176 I.C. 81=1

——S. 92—Mistak
sanctions admission o
SURETY BOND—CORI
A.I R. 1938 Nag. 259.

——S. 92—*Partition—Oral evidence—Admissibility—Test—Receipts referring to partition 'lists'.*

It is perhaps a moot point whether oral evidence is

——S 92—*Estoppel.*

All that S 92 of the Evidence Act excludes is oral evidence to contradict, vary, add to or subtract from the terms of a contract which has been reduced to writing.

consideration is on the other hand a matter of fact and not a matter of contract, and the recital of this fact is different from the former contractual part as to the passing of the property. S. 92 will not prevent a party from disputing the recitals in the sale deed. If the terms of the contract as to when the

EVIDENCE ACT (1872), S. 93

property is to pass are ambiguous, then recourse may be had to external evidence with a view to determining what the intention of the parties was, but if the intention of the parties has been stated in unambiguous terms, then the terms must remain the sole criterion of the intention of the parties, and evidence cannot be introduced for the purpose of showing that the contract means s

duced to writ-
missibility.
uced to writing
its terms could
Act. (*Bose,*
38 N.L J. 123.
ling two hals
of land at certain rate—Separate oral agreement that one of them was given rent free—Admissibility.

Where under a Kabuliyat two *hals* of land were settled with a tenant at a certain rate, a separate oral

A.I.R. 1938 Cal 430.

——S. 92, Proviso 3—*Promissory note payable on demand—Collateral oral agreement not to make demand until certain condition is fulfilled—Admissibility.*

different deeds are one and same transaction—Admissibility.

Where two deeds on their face appear to be separate transactions, another agreement which was not evidenced by any writing cannot be proved to show that the though apparently two separate transactions,

EVIDENCE ACT (1872), S. 106.
agreed to be treated as one. (*Wort and Varma*) DEONANDAN TEWARY *v.* DRAUPADI KUER.
175 I C 831=4 B.R. 632=11 R P
A I R. 1938 Pat

———S. 106—*Question whether plaintiff is authorized to represent institution in suit—Proof of the minutes of the meeting of Managing Committee—If sufficient to discharge burden*

Where the question is whether plaintiff is authorized by the Managing Committee of an inst... a suit on its behalf, and the proof of meeting of the Managing Cor... due authority ...

... L.W 239=1938 A LJ 194= 1938 O W N 245=1938 O L R. 104= 1938 A L R. 138=1938 A.W R. (P C) 74= 40 P L R 247=4 B.R. 317=66 C L J. 524= 10 R P C. 202=1938 O A 371=42 C.W N. 930= 1938 M W N 621=1938 P W N ... 40 Bom L R 724=A.I R 1938 P ... (1938) 1 M L ...

——— S 108—*Date of death—Presumption as*

There is no presumption under S. 108, Evidence Act, that a person who has not been heard of for a period of more than seven years died at the end of the first seven years or at any particular date. (*Barlee and Macklin, JJ*) VITHABAI *v.* MALHAR
I L R (1938) Bom. 155=175 I C. 190= 10 R B 524=40 Bom L R 147= A.I R 1938 Bom 228.

———S 109—*Tenant admitting tenancy—Presumption of its continuance*

Where a tenant at will admits the tenancy, S. 109 comes into operation and there is a presumption against him that he continues as a ten... ...

s ... p ... y ... a ... lo ... de ... is ... be ... Evidence Act and ...

... L.W. 490=A I R 1938 Mad 193

———S. 110—*Onus under—When discharged.*

The onus laid on a party by S. 110 of the Evidence Act is discharged by his showing that th... enjoyed by the other party rests on a basis ... with a right of property. (*Lord Norm...*) DISTRICT LOCAL BOARD, AHMEDABAD ... TARY OF STATE 32 S L R 310=1938 A ... 10 R P.C 186=4 B R. 295=172 ... 1938 O.A. 78=1938 O.L R. 83=1938 O ... A.I R 1938 P C ...

———S. 111—*Applicability—Bona fides—Of a transaction not disputed but only its nature.*

... not one of the *bona fid*... any particular transaction, but is one as to the nature of the transaction itself. When a question w... is entirely outside one of good faith and the transac... is impugned from another angle altogether. merely ... cause a sale takes place ...

... should in any way be vari... *and Braund, J.*) MA PHAW *v.* S... ...
A I R 1938 Rang 41

———S. 114, Ill. (a)—*Interval between commission of offence and recovery of property stolen or robbed—Presumption of receipt of stolen property—If justified—Duty of Judge to direct jury to consider interval—Accused absconding knowing of search—If justified presumption.*

When ...

... interval between ... has got to be considered, and the Judge must tell the jury that they should consider for themselves whether the date of arrest of the accused and the finding of the property with him are sufficiently near to the date of the offence to justify their making the presumption under S. 114, Ill. (*a*) of the Evidence Act. But where the accused is found to have kept out of the way and absconded knowing of a search, that entitles the jury to bridge over the interval. (*Horwill, J.*) THEVAR SERVAI *v.* EMPEROR. 173 I.C. 450= 1938 M W.N. 215 =10 R M 587=39 Cr L J. 323= A I R 1938 Mad 177.

———S 114 ...

... *gury—If sufficient evid-* ...

... *ccomplice—Meaning of.*

A person who is liable to be suspected of the offence of murder along with the accused and ... company of the ... not on that ...

... *Rao, JJ.*) VENKADU *v.* EMPEROR. 1938 M W N. 1272.

———S 114, Ill. (b)—*"Accomplice"—Meaning of—Police decoys instigating persons to commit crime ...*

EVIDENCE ACT (1872), S. 114.

order to catch them in the act of committing crime—Evidence of—Corroboration—Necessity.

Even where the object of the persons who instigate another to commit a crime is to catch him in the act of committing the crime, *e.g.*, police decoys, the instigation amounts to an abetment of the offence, and the abettors must be regarded as accomplices when the object of the instigation is to make the offender commit the crime and the person who is instigated actually commits the offence,

boration.

A witness is none the less an accomplice even though he has already been convicted on his account. Where one of the accused who pleads guilty and implicates the

(*Abdul Ghani, J.*) NARASIMHIAH *v.* GOVERNMENT OF MYSORE. 16 Mys L J. 147

———S. 114 Ill. (b)—*Accomplice—Evidence of—Corroboration by another accomplice—Sufficiency.*

It cannot be laid down absolutely that corroboration of one accomplice by another accomplice is not corrobo-

corroboration.

acting in collusion with one another, the cumulative effect of the evidence of two or more of them may be sufficient to remove the *prima facie* presumption of the individual unworthiness of credit of their statements, and if this be the case a conviction may legitimately be

extraneous to the person whose testimony it is sought to corroborate But it may consist of extraneous proof of a fact relating to that very person's prior conduct. The above conclusions apply to approvers also. 9 Rang. 404

EVIDENCE ACT (1872), S. 114.

and A.I.R. 1937 Rang. 209 Overr. (*Roberts, C. J. Baguley, Mosely, Ba U, Dunkley, Braund and Shaw, JJ*) THE KING *v.* NGA MYO

1938 Rang L R 190=175 I C 465=10 R R 494=39 Cr L J 581=A I R. 1938 Rang. 177 (F.B.).

———S 114, Ill (b)—*Approver or accomplice—Need for corroboration.*

Whether a witness is stigmatized as an approver or as an accomplice, he is as regards the matter of corro- the same footing. (*Costello, Jack* PURNANANDA DAS GUPTA *v.* 68 C L J 206.

(b)—*Evidence of accomplice—*

convict upon the uncorroborated testimony of an accomplice alone, although it is not illegal to do so. The Court should therefore regard an accomplice as *prima facie* unworthy of credit, but this presumption

1938 Rang L R. 190=A I R 1938 Rang. 177 (F.B.).

———Ss. 114 (b) and 133—*Accomplice evidence—Value—Independent corroboration—Necessity—Conviction, if can be based upon.*

Under S 114 (*b*) of the Evidence Act a Court may

such cases, S 133 of the Evidence Act makes it clear illegal merely because it is based ated testimony of an accomplice. *JJ*) SURAJPAL SINGH *v* EM- 38 Nag 516=1938 N L J 185= =11 R.N. 81=39 Cr L.J. 818=A I R. 1938 Nag. 328.

———S 114, Ill (b)—*Evidence of approver—Appreciation—Proper method.*

Where a charge of conspiracy depends upon the evidence of an approver, the judge should make up his

boration required—Statement of accused connecting him with crime—If sufficient corroboration

Corroborative evidence tending to connect the accused with the crime described by an approver does not need

EVIDENCE ACT (1872), S. 114.

to be evidence connecting the accused in every detail with the particular crime Evidence [illegible] which tends to connect the accused [illegible] The statement of the accused connecti[illegible] crime described by the approver is th[illegible] form of corroboration of an approver that one could [illegible]

[illegible] regularity. *See* MADRAS GAMING ACT, S. 6. 1938 M W N 421

——S. 114, Ill. (e)—*formalities—Presumptio[illegible]*

Where the bailiff who c[illegible] examined as a witness an[illegible] ment was made in accor[illegible] party asserting the con[illegible] bailiff or to lead evidence on the point. (*Dalip Singh and Bh*[illegible]) RAM B[illegible]

——[illegible]—*Presumption of accuracy.*

Where an entry in the Revenue Record is concerned [illegible] course of official routine. (*Darling, S. M. and Mehta, J. M.*) PURAN LAL *v.* BALBHADAR PRASAD [illegible]

——S. 115—*Acquiescence—Outlay of* [illegible] *ther person's land—Acquiescence of tru*[illegible] *tials to estop true owner.*

In the case of an outlay of money by a person on another's land the following essentials must co[illegible] order to constitute acquiescence which would [illegible] true owner In the first place the person inc[illegible] penditure must have made a mistake as to [illegible] rights. *Secondly* he must have spent some m[illegible] must have done some act on the faith of his [illegible]

——S 115—*Applicability—Different allegations as* [illegible]

EVIDENCE ACT (1872), S. 115.

some representation as to existing fact. There cannot [illegible] respect of a representation not as to one *de futuro.* (*Broomfield and* [illegible]) [illegible]PARSHOTTAM *v.* SECRETARY OF [illegible] 39 Bom L R 1257=174 I C 67=10 R B. 420=A.I.R. 1938 Bom. 148.

[illegible] *impleaded* [illegible] *compromise* [illegible] *character* [illegible] n the suit for rent by the landlord and who during the execution [illegible] by the auction-purchaser against the order setting aside [illegible] 42 C.W.N. 701=A.I.R. 1938 Cal. 600.

——S. 115—*Estoppel by record—Judgment creating* [illegible] *urchaser for value* [illegible] right, it works an estoppel. A judgment creating a charge on immovable [illegible] of the law [illegible] *hat is, in this* [illegible] to the land, the subject of the charge from one who was a party to the suit by the decree in which the land was charged.

[illegible] *nconsistent pleas—Plea in execution* [illegible] *ly was by suit—Plea in subsequent suit* [illegible] *under S. 47, C. P. Code—Estoppel.*

[illegible] not permit a party where the question [illegible] re to urge that one form of procedure [illegible] d and when he has successfully main[illegible] e procedure which he urged should be [illegible] followed to urge that the new pro[illegible] nd the old procedure was right Consequently, a party who has successfully maintained in execution proceedings that the proper remedy of the opposite party was by way of a suit, cannot be heard, when the suit is brought, to contend that the proper remedy was by way of execution and that the suit was barred by S. 47, C. P. Code. (*Dalip Singh, J.*) TAGU MAL *v.* MOTI LAL. 40 P.L.R. 243=A.I.R. 1938 Lah. 525.

——S 115—Representation—Hindu joint family—Unauthorised sale by son during temporary absence of father—Subsequent return of father and consent to mutation in favour of alienee—Effect—Father, if estopped from challenging sale *See* HINDU LAW—ALIENATION. 16 Mys L J. 32=42 Mys H C.R 669.

——S 115—Representation—Hindu widow—Adop[illegible]

by sale of holding—Plea of non-transferability of tenure—If open in execution.

It is not open to a tenure holder judgment-debtor, who has obtained advances on mortgages of his holdings on the representation that he was in enjoyment of a transferable interest in land, to object to a sale

purchaser. That is a matter bet... the landlord (*Courtney Terre*... SOMAR RAM v. BUDHU RAM

175 I C 482=1938 P.W...
10 R P. 630=...

——S 115—Representation ... permanent lease by Mohunt of ... Salami and building pucca structure—Tenant not getting agreement specifically enforced or taking registered lease—Suit to eject by succeeding Mohunt—Estoppel *See* T P ACT, S 107 1938 P W N. 386

——S 115—*Representation—Plea of estoppel—Fraud, if necessary*

It is not necessary for the purpose ... fraud or deception should be pleade... that any representation was intention... party and it was acted upon by the ... rule of estoppel will apply. (*Bhide*, ... SHAH v. MAHOMED YAQUB. 40 P L R. 848= 178 I C. 436=A.I.R. 1938 Lah. 558.

172 I.C. 981=1938 O A. 78=1938 O L R 83= 1938 O.W.N. 90=A I.R. 1938 P.C 87 (P C)

——S. 115—*Representation—Whether can be of law.*

The expression "a thing" in S. 115 of the Evidence Act refers to a belief in a fact. The representation in order to work an estoppel must be a material statement of fact. The reason for this appears to be that every

(*Zia ul-Hasan* ...) JAGAT NARAIN SINGH ... RAM SINGH. 1938 O.L ...

——S 115 ... The law of ... enacts is the s... MERCANTILE ... INDIA.

19 Pa...

1...

19...

end.

Once the tenancy is at an end there is nothing for S. 116 of the Evidence Act to fasten on to when the

tenancy is not continuing, the statutory estoppel comes to an end (*Stone, C.J and Bose, J*) ABDUL RAZAK v. SETH NANDLAL. 1938 N L J. 317= A I R 1937 Nag 506.

——S. 116—*Applicability—Tenant already in possession.*

A.I.R. 1938 Pesh 49.

——S. 116—*Denial of lessor's title—When permissible.*

A tenant is not estopped merely because by the tenancy he acknowledges the title of his landlord, and a tenant may always explain and thereby render inconclu-

——S. 116—*Lessee not inducted on land by lessor—*

42 C.W N. 1032.

——S. 116—*Scope and effect of—Expiry of period fixed in lease—Estoppel against tenant if continues thereafter—Tenant neither paying rent nor accepting title of landlord since—Absence of evidence of landlords assent to tenant's possession—Suit for possession more than 12 years after expiry of lease—Maintainability—*

tenant from ... tinuance of ... in a lease,

created or arose after such date. (*Horwill, J.*) HARAMIAH v. RAMASWAMY. 176 I C. 84= 11 R M. 30=46 L.W. 848=A.I.R. 1938 Mad. 73.

——Ss 123, 124, and 162—*Privilege—State not a party—Rules governing production of documents.*

. Where the state is not a party
govern the question of production o
privilege, etc.—(1) All documents
produced. (2) In case of state documents the privilege should be claimed by the witness who is summoned to produce them. (3) When objection is taken the Court cannot inspect the document but can take other evidence to determine its nature (4) Ordinarily it is enough if
the head of the depa
affair of state. (5)
but may require

(Bose, J.) BHAIYA SAHEB v. RAMNATH.
A I R 1938 Nag. 358.

——S. 133—*Approver—Corroboration—Nature of evidence necessary.*

An approver's statement must be regarded with suspicion and cannot be accepted without material corroboration The prosecution
substantial evidence to corrobora
approver that he took part in
offence, but also that the other accused took part with him. (*Weston.*) GANESH v. EMPEROR.
1937 A.M.L.J. 123.

——S 133—*Uncorroborated evidence of approver—Conviction, if can be based on—Discretion of Court.*

S 133 of the Evidence Act gives the court a discretion to base a conviction solely on the uncorroborated evidence of an approver. Such a conviction is not illegal. (*Baguley, J.*) NGA MYO v. THE KING.
1938 Rang.L R 213

——S. 145—*Compliance with—Sufficiency.*

Where the whole of the previous statement made by the witness is read out to him and he is cross-examined in respect of it but he gives evasive replies, S 145 of the Evidence Act is fully complied with, although the

to contradict evidence of inquest officer.

(1938) 2 M L J. 618.

——S. 145—*Witness sought to be contradicted in cross examination by his statement to police—Cross-examination subject to subsequent proof of statement—Permissibility.*

Where a witness is sought to be contradicted by a

——S 157—*Construction — 'Former statement'—Meaning of.*

The words 'former statement' in S. 157 of the Evidence Act mean a previous statement of the witness who is to be corroborated made on another occasion, (*i.e.*) an

subsequent state-
(*S.N. Guha and*
MANDAL v. EM-
16 = 10 R C. 607 =
39 Cr.L J. 395 = A.I.R. 1938 Cal. 125.

——S. 157—*Reference by witness to deed to which he was not party—Permissibility.*

In a suit for possession of certain shop one *G*, who

not a party, *i.e.*, to statements which he did not make as corroborative evidence under S. 157. (*Skemp, J*) KHEMAN v. CHHOTU. 40 P L R 968 =
A I.R. 1938 Lah. 635.

——S. 160—*Witness not recollecting facts nor stating that he had reported facts correctly—Evidence of such*

is made by a witness to state
rt, what the accused in the case was alleged to have said, nor does he state before the Court, that although he has no specific recollection of the facts themselves, he was sure that the facts were correctly reported by him in his report, the evidence of such witness is inadmissible in evidence. (*Blacker, J.*) PINDI DAS v EMPEROR. 40 P.L.R. 872 =
177 I C. 707 = 11 R L. 357 = 39 Cr L J. 930 =
A I.R. 1938 Lah. 629.

——S 162—*Privilege—State document—Test.*

Police during an investigation seized account books of a certain person and made copies of it in their diary. In a later civil suit that person denied that he kept accounts and hence the other party called for the copies of the account books made by the police to be produced in evidence. Police refused to produce the copies claim-

State docu-
important
course of
a police investigation. Neither the police nor any other
rules of disclosure by the
g matter for which no privi-
otherwise privileged docu-
SAHEB v. RAMNATH.
A I R. 1938 Nag. 358.

mission of evidence—Duty of Court—Conviction on the remaining evidence.

Where there has been an improper admission of evidence, a Judge would be acting correctly under S. 167 of the Evidence Act, if he comes to the conclusion that the rest of the evidence is sufficient to justify the conviction. (*Gruer, J.*) JAMNA PRASAD v. EMPEROR.
39 Cr L J. 427 (2) = 174 I C. 523 =
10 R.N. 417 = A.I.R. 1938 Nag. 325

EXECUTION.

See also C P. C , S. 47 AND O. 21.

Amendment of application.
Attachment.
Compromise
Delivery of possession.
Executing Court—Powers.
Jurisdiction.
Minor.
Revival.
Right of true owner to execute.
Sale.
Withdrawal.

EXECUTION.

—— Amendment—Defective application for execution

terms of tenancy.

judgment-debtor. He is just as much bound by those equities as was his judgment debtor and it matters not

——*Compromise—Executing Court—Duty to record.* The executing Court is bound to record a compromise between the parties and th[illegible] promise extinguishes the intend to extinguish the question as to whether or [illegible] to record it (*Dalip Sing*[illegible] CHAND v DES RAJ

——*Delivery of possessi*[illegible] *sion of judgment-debtor possession and symbolical —Delivery by proclamation—Effect of.*

in the Code of Civil Procedure But the mode of delivery will vary naturally according to the nature of the property delivered In case of property in actual physical occupation of the which he actually res[illegible] by being bodily remo[illegible] or purchaser must If the property is rights in direct poss[illegible] judgment debtor cann[illegible] though delivery wou[illegible]

EXECUTION.

objece to final decree and to execution therefore—Subse-

ravelling the truth, however cleverly hidden by false or [illegible] to [illegible] and [illegible]*ar,* [illegible]70. [illegible]*rs-* [illegible]*-If* *can be raised.*

S. 11, Suits Valuation Act, and S. 21, C. P. Code, [illegible] general principle [illegible] on, its judg- be declared [illegible]y be present- [illegible]it has been [illegible]or pecuniary be raised in [illegible]*on, J C. and* [illegible]IOHAMMAD.

178 I.C 275 = A I R 1938 Pesh. 77.

——*Executing Court—Power to go behind decree.* The executing Court is competent to go behind the

that the Court had jurisdiction to pass the decree and

A I R. 1938 Cal [illegible]

——*Executing Court—Power to go behind decree.* An executing Court has no right to go behind the

[illegible] P.W.N 617.

[illegible]*e against un-* [illegible]*behind decree.* [illegible]nted minor is a [illegible] an executing [illegible]ed was [illegible]was a minor

EXECUTION.

was not represented by guardian *ad litem*, it is necessary for it before it executes the decree to determine whether there is a decree wh
The rule is that an executing
void decree. (*Addison and L*
PIR TAJ-UD-DIN v. KHAMBATT

——*Executing Court—Powers of—Jurisdiction Court that passed decree—Enquiry into.*

An executing Court must be able to decide whether decree exists at all and therefore where the Court has no

settles the question as to whether there is an existing

—Relief against See CONTRACT ACT, S. 74.
A.I.R. 1938 Sind 186.

——*Executing Court—Powers of—When can disregard decree.*

No doubt the executing Court has got to take a decree and execute it as it stands, but the executing Court is not precluded from finding out whether any decree had ever been passed at all, and merely because something has been written in a decree form, it does not necessarily make it a decree. Hence where there is no judgment to

the parties agreed to pay instalments and also agreed that, in the events of the instalments not being paid, execution could be taken out as regards both. It was contended that the Judge had no jurisdiction to make this consolidation.

Held, that the Ju
decrees and executio
fact that the compr
be with regard to t
jurisdiction of the
minded, they coul
separately in respect
was effected by the
adopted. (*Wort and*
v. KANI RAM BHAC
4 B.R. 618

——*Jurisdiction—*
jurisdiction.

A Munsif has juri
perty beyond his ow
the same division.
PROSAD v. JADUNA
11 B.P. 32=

——*Minor—Decree against—Attainment of majority in the course of execution—Duty to inform Court—On*

EXECUTION.

whom lies—Failure to inform Court—Effect—Inference of fraud.

to attain
eedings,
ad come
is that
by his
part of the
fact cannot
(*Thomas,*
AN PRASAD
v. RAJENDRA PRASAD. 1938 O.A. 598=

Estoppel. See EVIDENCE ACT, S. 115, 19 P.L.T. 421.

tion case.

Where in execution of a money decree 8 lots of immovable properties were attached but by mistake on the part of Nazir only 7 out of 8 lots were actually sold and the execution case was dismissed on part satisfaction, on a subsequent application by the decree-holder for reviving the execution case in order to sell the property of lot No. 8.

Held, that having regard to the fact that the 8th property had been attached and there was no order made

execu-
part of
edy that
on as a
execution case. (*S. K.*
HAKRABURTTY v. KULA
42 C.W.N. 286.

ned by benamidar, *Right*

rove that the decree holder is his *benamidar*, is entitled to execute the decree. (*Panckridge, J.*) PRADOSH CHANDRA BASU v. HUGH GORDON. I.L.R. (1938) 1 Cal. 692.

——*Sale in—Decree-holder and auction-purchaser—*

debtor applying for time and stating that he would not object to sale under fresh proclamation—Effect of.

——*Sale—Purchaser's rights—Judgment debtor having no interest in property sold—Right of purchaser to refund of consideration from decree holder.*

In India an action for recovery of money paid for a consideration which has failed is maintainable as in England inasmuch as S. 65, Contract Act and Ss. 38 and

the money which he got possession of under such ignorance or mistake. The auction-purc then invoke the principle in his favour

the sale the decretal amount is reduced in appeal, when there is nothing to show that the judgment-debtor would or could have paid the smaller amount decreed in appeal and prevented the sale (*Mitter and Edgley, JJ.*) BARABONI COAL CONCERN, LTD. *v.* DEVA PRASANNA MUKHERJEE. 42 C.W.N. 1032.

——*Sale—Validity—Sale with wrong legal representative of deceased judgment-debtor on record—If void.*

Sale of pro- r—Lien of —Charge— *See* T. P. M.L.J. 316.

of proceedings — Right of decree- ecting petition for withdrawal—

has not an unqualified and absolute right to withdraw from execution proceedings at any stage. The Court can refuse him permission to do so where the circumstances are such that some third party has become involved or has acquired some interest. Where the Court rejects the decree-holder's petition to strike off the execution case on the ground that the pro-

C. P. J. 91. 1908), *made ned in*

An order of consent to a prosecution under the Explosive Substances Act which purports to be made by His Excellency the Governor is an order of the Local Government for purposes of S. 6 and is a valid order of consent. The executive authority in the Province is vested in the Governor, and the question whether he has consulted the ministers or not in the matter is not a

FACTORIES ACT (1934), S. 60.

factory does not become a factory under S 9 (3) of the latter Act until it is actually so used (*King, J.*) THE COMMISSIONER OF LABOUR GOVERNMENT OF MADRAS v. RANGANNA GOWD.

1937 M.W.N. 1335.

——Ss 60 (b) (1), 42 and 81—*Prosecution for allowing work to proceed beyond time fixed—Plea in defence*—Bona fide *mistake—Protection under S. 81, if available*

Where the manager is prosecuted under S. 60 (*b*) (*i*) read with S 42 of the Factories Act for allowing work to be done beyond the prescribed period, it is no defence to plead that the accused acted in goc *believing in the clock in the factory* that he is protected by S. 81. That apply to a manager, it was inserted p entirely for the benefit of the inspecting *be said that the manager is acting unde* enough in a prosecution under the Act to prove that the

FAMILY ARRANGEMENT.

Consideration.
Essentials
Upholding.
Validity.

——*Consideration—Settlement o, ration of peace and harmony in fa*

The settlement of disputes and peace and harmony in the family consideration for a family arrangem that the claim of one of the parties have had greater legal foundation th does not necessarily show that th *bona fide* or that the arr ngement family arrangement. The *bona fide* settlement of a family dispute does not require any specific consider tion to support it. (*Pandrang Row and Venkat ramana Rao, JJ*) RAMASWAMI CHETTIAR MANIKKAM CHETTIAR.

1937 M W.N 1249 = 11 R M. 127 = 47 L W. 118 = 176 I C. 617 = A.I.R 1938 Mad 236 =

——*Essentials—Avoidance of Beneficent to all parties.*

Where during the lifetime of a between her, her husband's brot and there was almost a certainty o among members of the family a entered into with a view to avoid a by which each of the three par widows, her husband's brother a benefitted it was held that it a

——*Essentials of validity—Settlement also effecting settlement of disputes with strangers—Such disputes connected with members of family—If ceases to be family settlement.*

FEDERAL COURT RULES, O. 8, R. 1.

objects, the arrangement also settles other disputes with strangers, which are intimately connected with the disputes of the family, it goes out of the domain of a

A.I.R. 1938 All. 170.

——*Validity—Fairness—Test.*

Family re settlements executed between father, tenant ter being advised an be considered ourt even though, e son's position is generous to a son, one, or a son to

J. CASHIN.
A I.R. 1938 P.C. 103.

——*Validity of—Test.*

Where family agreements have been fairly entered into, without concealment or imposition on either side.

FATAL ACCIDENTS ACT (XIII OF 1855), S. 1—*Damages—Assessment—Basis of.*

——S. 1—Suit for damages against several wrong doers—No joint tort—Joint decree against all—If justified. *See* TORT—NEGLIGENCE.

1938 M.W.N 1241.

FEDERAL COURT RULES. O. 8, R. 1 and O. 15, R. 4—*Applicability—Application in revision—Application for leave to proceed with as pauper—Proper procedure—Power of Court and of Registrar.*

FEDERAL COURT RULES O. 10, R. 3.

The rules framed by the Federal Court do not expressly refer to applications in revision; but the Court under its inherent powers can apply the analogy of the provisions prescribed for appeals. In the case of an application for leave to continue a revision application *in forma pauperis*, O. 15, R 4 of the rules does not apply, and it would not be appropriate to the Registrar to start an investigation into the petitioner's alleged pauperism at once; it would be more convenient if the application for leave to proceed as a p
before the Court along with the main
revision. If the Court after hearing th
his counsel sees no objection to entertair
it may either dispense with the enquiry
or order a fresh inquiry to be made either by itself or by the High Court. O. 8, R. 1 of the Federal Court Rules which gives the Registr.
in respect of applications for
cannot be availed of in the ca
(*Sulaiman, J*) PASHUPAT
OF STATE.

——O. 10, Rr. 3 and
reference under O 33—P
COURT RULES, O 33

——O 15, R 4—Applicability—Application in re-

——O. 33—*Reference under—Procedure as to pleadings, etc.—Concise statements of facts, arguments and authorities—If to be filed—O. 10, Rr. 3 and 5—O 21, R 2.*

The provisions of O. 21, R. 2 of the Federal Court Rules as to pleadings and their contents cannot obviously be applicable to a special reference under S. 213 of the

C. P. AND BERAR SALES OF MOTOR SPIRIT AND LUBRICANTS TAXATION ACT, *In the matter of*.

1938 P W N. 609.

——O. 36, R. 2—*Scope—Special reference under S. 213, Government of India Act re. validity of Act of one Province—Right of other*
Terms—Powers of Court to im

In a reference under S. 21.
India Act as to the validity of a
Legislature, in which no other
cerned and to which no other Province is made a party (no notice also being served), it cannot be said

their points of view, if their Provinces are indirectly interested in the reference. O. 36, R. 2 of the Rules makes a special provision for them to apply to be heard.

GANJAM AND VIZAG AGENCY RULES R. 55.

If they so desire to be heard they should file statements, arguments and authorities, and would be subject to any order as to costs which the Court can, and may think fit to pass after the reference has been heard (*Gwyer, C.J., Sulaiman and Jayakar, JJ.*) C. P AND BERAR SALES OF MOTOR SPIRIT AND LUBRICANTS TAXATION ACT, *In the matter of*.

1938 P.W N. 609.

FIRST INFORMATION REPORT. *See* CRIMINAL

recognition of existing rights ... —If proper.

a transit fee for cattle (*Grille, J.*) SECRETARY OF STATE *v.* NAGORAO TANKO

A I R 1938 Nag 415.

nce under S. 26 (d)—

theft of grass which
grass and young trees
nd such cattle used in
26 (*d*) of the Forest
Act are as much liable to confiscation as cattle drawing a cart containing illicitly felled timber. (*Grille, J.*) EMPEROR *v.* MOHAMAD KHAN.

11 R.N. 32 = 39 Cr L J. 700 = 175 I C 795 = A I R 1938 Nag. 365.

——S. 55—*Scope and object of—Master's liability for acts of servant in cases of cattle trespass into*

two children, in the vicinity of a closed forest, it might be held to amount to such negligence as to suggest connivance at a breach of the law. (*Grille, J.*) EMPEROR *v.* MOHAMAD KHAN.

11 R N 32 = 39 Cr.L J 700 = 175 I.C. 795 = A.I.R 1938 Nag 365

A.I R 1938 Cal 602.

GANJAM AND VIZAGAPATAM AGENCY

refusing amendment of plaint. If he refuses to revise on the ground that he has no jurisdiction to revise such orders, he wrongly refuses to exercise a jurisdicti

possessed by him and the High Court will set aside his order. (*Leach, C. J. and Madhavan Nair, J.*) KANNAYYA *v.* LAKSHMIDEVI. 47 L.W. 692= 1938 M W.N. 575=A.I.R. 1938 Mad 708= (1938) 1 M.L J. 813.

GENERAL CLAUSES ACT (X OF 1897), S. 3 (7) —'British India'—Berars, if included in. *See* C. P. CODE, S. 17—APPLICABILITY. 39 Bom

———S. 9—*Applicability—Decree or order*
Direction to party to deposit amount in Co
fifteen days from date of decree—Interpretation of—Date of decree—If to be excluded—Intention of judge—If material.

S 9 of the General Clauses Act, it is true, would not apply in terms to a decree or order of Court, but

the Judge who made the order, it was to be made out from the expression used, and what was material was the

falling on Court holiday—Payment in reopening day—Sufficiency.

S. 10 of General Clauses Act applies to a case in which an act is allowed or ordered to be done by an Act of the legislature, it does not apply to an act ordered to be done by a compromise decree. A compromise ... and is none the ... though there

payment of an insta
a day which is a
cannot invoke S. 1
claim to pay it on the day ... *and Varma, JJ.*) RAM KINKAR SINGH *v.* KAMAL BASINI DEVI. 17 Pat 191=177 I C. 881= 5 B R. 32=19 Pat L T 825=A I R 1938 Pat. 451.

GENERAL CLAUSES ACT (XIX OF 1936), S. 6 A—Effect of on S 7, Criminal Law Amendment Act. *See* CRIMINAL LAW AME... S. 7.

GIFT—*Date of—Presumption—Revenue records—Minor donee—*

In the case of a gift made b... venue records, the presumption is ... the gift on the date of his application for mutation. Where the donee is a minor and is living with the donor, the question of possession is not material. (*Bhide, J.*) MAL SHAH *v.* JABRU. 40 P.L.R. 621=A.I.R. 1938 Lah 794.

———*Validity—Imperfect gift followed by appointment of donee as executor.*

An imperfect gift followed by the appointment of the donee as executor, the intention to give continuing, entitles the donee to the property. (*Lord Maugham.*)

MARTIN CASHIN *v.* PETER J. CASHIN. A.I.R. 1938 P.C. 103

GOVERNMENT OF BURMA ACT, S. 85—Objection that pleader engaged by opposite party should not be allowed to appear—Objection accepted in lower Court —Interference. *See* C. P. CODE, S. 151 A.I.R. 1938 Rang. 241.

Act, to Madras ... Government—Necessity.

The Governor-General is the sole judge as regards the exercise of his powers under S. 67 B (2) of the Government of India Act, 1919, and he is not bound to give ... an ordinance such as the ... Act of 1935, which when ... a lawful Act. Where the ... inal Law Amendment Act ... ce has been duly notified, ... as that section is on the ... need for a re-notification ... ment extending it to Madras. ... *r Rahman, J.*) ARUNAGIRI— 1938 M W.N. 1105 (2)= ... W. 813=(1938) 2 M L J. 863.

... nd effect—Bihar Money Lenders' Act, S. 16—If void as repugnant to O. 21, R. 66, C. P. C. (Patna amendment). *See* BIHAR MONEY LENDERS' ACT, S. 16. 19 Pat L T. 760.

... *tion of Crown servants.*

... ernment of Burma Act purports to ... to all servants of the Crown for ... e execution of their duty as such ... ment of the Act. The protection ... existing pro- (*Mosely, J.*)
... N. ... 75 I C 360= 39 Cr.L J. 565=10 R R 487= A I R 1938 Rang. 189.

———S ...
Under ...
it is the ...

... l faith before (*Mosely, J.*)
... N. ... Cr L J. 565= ... 1938 Rang 189.

GOVERNMENT OF BURMA ADAPTATION OF LAWS ORDER (1937), Cl. 10—*'Right' and 'Privilege'—Interpretation.*

The words "right, privilege, objection or liability already acquired, accrued or incurred" in the Govern- ... Order 1937 must ...

Adaptation of Laws Order, 1937, must be construed strictly and the words 'right' and 'privilege' must be given their legal meaning. In law a 'right' is an advantage which can be enforced by appropriate action before a Court, and a 'privilege' is nothing more than a special right enjoyed by certain persons, beyond the rights which the public in general enjoy. Accordingly the right to have a suit stayed is in law neither a right nor a privilege. (*Roberts, C.J., Mya Bu and Dunkley, JJ.*) ARUNACHALAM CHETTYAR *v.* VALLIAPPA CHETTYAR

GOVT. OF BURMA ADAPTATION OF LAWS ORDER (1937). Cl. 10.

TYAR.

10 R 1.

——Cl. 10—

S. 10 of the
Laws Order of
acquired and

and effect of—
Law as to, if affected.

The power of the Courts in Burma to execute a decree of a Native Prince or State in India, arises from the notification of the Government of India under S 44, C. P. Code, as it stood prior to its amendment. The effect of para. 9 of the Adaptation of Laws Order and Ss. 148 and 149 of the Government of Burma Act, is only to continue in force the law with executions as it existed immediately mencement of the Government of Bu such law has not been altered, repeale the legislature or other competent a any decree of a Na notification under S. 4 executed in Burma may not after the am Native State within *Braund, J.)* M M R.M.K KRISHNAN C

193

11 R

GOVERNMENT O

Contract under—Co
Formal deed or inden
respondence—Requirements of validity.

There is no justification for holding that a contract in order that it may comply with S. 30 of the Government of India Act must be by deed, *i.e.*, under seal. There is no such provision in S. 30; the section does not

amounts to the
recommend to
if sanct
name o
binding
enforce
TARY C

——S 80 (a) *Mining rules, R. 40—Construction and scope—Mining lease—Requisites of validity—Absence of formal lease—Effect of—"Right of the applica*

Unde
1919,

GOVT. OF INDIA ACT (1915). S. 96 B.

OF STATE. 48 L W. 194= 1938 M.W.N. 718=A I R 1938 Mad 749= (1938) 2 M L J. 141.

——S. 45—*Scope—Powers of Government of India—Mining lease—Power to grant—Mining Rules, R. 4—Order delegating to Board of Revenue—Order of Local Government reversing grant by Board of Revenue—If*

lease has been
to the Board of
les framed by the
uthority to grant

J. and Lakshmana Rao, J.) SANKARA MINING SYNDICATE, LTD *v.* SECRETARY OF STATE.
48 L W. 194=1938 M.W.N. 718= A I R. 1938 Mad 749=(1938) 2 M L J. 141.

——S 80 A (3)—*Scope and effect of—Powers o,*

L.R. 1938 All. 781=
A W R (H C) 626=
782=178 I C 177=
A I.R. 1938 All. 564.

Rules framed under—
servants at pleasure—
Dismissal in violation of rules—Right of redress in Civil Court.

It is a fundamental principle

GOVT. OF INDIA ACT (1935), S. 224.

Cl. 1 of S. 222 of the Government of India Act expressly recognises and provides for the contingency of the Office of Chief Justice of a High Court remaining vacant for some time. Cl 2 of the Letters Patent (Patna) only *determines the constitution of that High Court b·* declaring that it shall consist of a Chief Justice and certain number of other Judges. In the case of vacancy caused by death some time must necessaril elapse before a new appointment is made. It would be preposterous to hold that during the interval between the

of the Chief
the office of

jurisdiction of the Vacation Bench in the least or render it incompeter

178 I C. 376 =

——S. 224—*Applicability.*

Although S. 224 of the Government of India Act (1935) contains in eff
S. 107 of the previou
contains a proviso w
no application of i
(*Costello, Ag. C. J.*
v. CHANDULAL.
174 I C 51=1

——S 224-
can interfere
See GOVERN
224

——S 22
Court.

Outside the
ment of Indi
Court has a
Subordinate Courts within its jurisdiction, such for example as the Court of King's Bench in England has for centuries exercised over Courts inferior to itself (*Gwyer, C. J. Sulaiman and Jayakar, JJ.*) PASUPATI BHARTI v. SECRETARY OF STATE.
1938 O.W.N. 1251 = A.I.R. 1938 F.C. 1

——S 224 (2)—*Interlocutory order—Revision.*

S. 224 (2) limits the High Court's powers to question judgments of inferior Courts to those given under the ordinary law. Hence High Court cannot entertain a revision from an interlocutory order which is not a decided case (*Skemp, J.*) AMAR SINGH v. SECRETARY OF STATE 40 P.L.R. 775 = 178 I.C 292 = A I.R. 1938 Lah 442

——S 224 (2)—*Jurisdiction of High Court—Order under S. 36, Legal Practitioners' Act—Revision. See* C. P. CODE, S. 115. 47 L.W. 578.

GRANT.

——S. 226 (1)—*Construction—Matter 'Concerning the revenue or an act done in the collection thereof'—Declaration by the Court of Wards that a person is a disqualified proprietor—If affected by S.* 226 (1).

justification for saying that an order of the Court of Wards declaring a female, a disqualified proprietor

——*Chowkidari jagir —Resumability —Zamindar*

tion for the performance of such duties are to that

so long as the holder of the land is the Chowkidar of the village
liable to re-
Act (VI of
eceives pay

——*Construction—Alienable estate—Use of words*

held before the grant, so far as the question of alienability is concerned. (*Stone, C J. and Bose, J.*) LAL CHAND v. DHANOO. I L R 1938 Nag. 229 = 10 R N. 226 = 172 I C. 580 = A I.R 1938 Nag. 95.

——*Construction—Conflicting descriptions—Which to prevail.*

Where there are two conflicting descriptions of the subject-matter of a grant or two conflicting parts of the same description, that which is the more certain and stable and the least likely to have been mistaken or to have been inserted inadvertently must prevail, if it sufficiently identifies the subject matter. Preference ought to be given to that element of the description of the subject-matter which is most consistent with the intention of the parties to be collected from other parts of the deed, illumined, if necessary, by the surrounding circumstances and subsequent conduct of the parties. (*Niyogi,*

GRANT.

(J.) UMRAO BAPU v. RAMKRISHNA BAPU. I.L.R. 1938 Nag 50=

used the water for other purposes, su
for bathing or for washing cattle,
create any rights of ownership in the
tion in regard to irrigation tanks is

over where the tank or channel
limits of the inam, it must be he
grant. (*Venkatasubba Rao and*
APPA RAO v. SECRETARY OF S
1938 M.L.W.N.
A.I.R. 1938 Mad. 193=

——Construction—Extent granted—Decision as to—
Ba
Su

-triem is entered as
persons in col. 14,
and the shrotriem
enjoyed by the per
to have entered so be
mentioned in the P
the title is perfect
possession is prove
register about mine
revenue was based en
tural land. The lanc
of producing crops

GRANT.

grantees began to extract and work mica from the land.

e who
been
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nad made by the latter certain lands had
to his ancestors by the ancestors of
ts for the gumasthagiri service performed in
the past and to be performed in the future and he
relied on three documents or sanads as the basis of
anad of the year 1791, which
recited that the father of the
himself very much for the
had rendered very great service
and that therefore the watan of gumasta had been

GRANT.

... Yourself and
our three
ting value
. In the
the watan

Held, on a construction of the documents, that the three sanads read together did not confer anything more than the office of gumasta and provide that the office was to be remunerated by a one-fourth share in the income of the watan lands, and as such was clearly resumable, there being no grant of land at all burdened with service. The grant being one of an office only would be resumable whether it was for past and future services or for future services only. (*Wadia, J*) HANMANT *v.* GURUNATH. 40 Bom L.R. 88 = 174 I C 809 = 10 R B. 487 = A.I R. 1938 Bom 188.

——Construction—Sheri lands—Grant by Government to member of joint Hindu family—Grant *prima facie* in name of individual member and not for benefit of family—If joint family property or grantee's separate property. *See* HINDU LAW—JOINT FAMILY.
40 Bom L.R. 118

——*Construction—Subse*
Agraharam—Open use of ta
Government not collecting
mission of grantee's title to
Certain tanks situated in
used for purpose of irrigat
openly cultivated by the Agraharamdars. The Government collected cesses, but forbore from collecting assessment.

Held, that collecting cesses but forbearing to collect assessment almost amounted to an admission on Government's part of the Agraharamdar's title to the tank beds whether the Government so intended it or not. (*Venkatasubba Rao and Abdur Rahman, JJ.*) APPA RAO *v.* SECRETARY O
47 L.W

——*Construction—*
house—Restriction as
of Government.

Where the sanad recited that the grantee should not transfer his share 'to any one not taluqdar of the heir to a taluqa', it only means that the grantee could transfer his share only to any one in his own position or to his own heir apparent or to the heir apparent of such other person. The intention of the Government was that these houses should go with Taluqa as an appurtenance thereof. The house should follow the Taluka. (*Hamilton and Yorke, JJ*) RAZA HUSAIN KHAN *v.* SAIYID MAHOMED 1938 O A 353 = 1938 O.W.N. 462 = 1938 O L R. 244 = 1... 1938 Oudh 175

——*Constructi*
'heir to taluqa'—
In connection
Estates Act, the
stood only in the
used to-day name
pression 'heir to
to such a perso
(*Hamilton and Y*
SAIYID MAHOM

——*Crown land—Grant of land to duffadar by Revenue Divisional Officer—Cancellation by Collector—Validity of.*

GRANT.

Where a Revenue Divisional Officer made a grant of valuable Crown lands to the daffadar of his office, who was not a member of depressed classes, and the grant was set aside by the Collector under his revisional powers, that existed in 1925.

Held, the original grant must be considered to have been absolutely devoid of authority. The grant being adverse to the interests of the Government, the Collector acted within the scope of the authority conferred on him by Board's Standing Orders No. 15 in cancelling the grant. (*Pandrung Row and Abdur Rahman, JJ.*) VENKATARATNAM *v.* SECRETARY OF STATE FOR INDIA. 1938 M.W.N. 65 = 177 I C 629 = 11 R M. 360 = A.I.R. 1938 Mad 318 = (1938) 1 M.L J. 187.

——*Duration — Permanent tenancy of watan lands—Death of grantor—Status of tenant—Acceptance of rent from latter—Effect of.*

A permanent tenancy of paragana watan lands ceases on the death of the grantor: the grantee thereafter becomes a tenant on sufferance or, on acceptance of rent from him, a tenant from year to year—not a permanent tenant. (*Broomfield and Macklin, JJ.*) BABASAHEB

——*Inam—Alienability—Construction of sanad—Jat inam permanent—To grantee, 'his sons, grandsons and great grandsons and so on from generation to generation'—Confirmation by Inam Commissioner—Limitation to lineal male descendants of grantee—Effect of.*

Where a sanad of 1779 granted certain lands as jat

inalienable.

Held, that there was nothing in the tenure of the village to indicate that alienation was forbidden, and that the terms of the Inam Commissioner's renewal order, do not lay down any restriction as to the grantee's power of alienation but merely state the period during which the village would be allowed to be enjoyed as inam (*Broomfield and Wadia, JJ.*) GAJANAN *v.* JANKIBAI. 39 Bom L R. 1304 = 174 I C 266 = 10 R B. 436 = A I R 1938 Bom 113.

——*Inam—Resumability—Presumption as to—Rule—Pattamdar service inam—If resumable.*

(1) grants of
ith service, (2)
future service;
iterest in land
groups (1) and
resumable by
to that effect,
to dispossess
several gene-
establish facts
rence that the
In the case of
there is a pre-
sumption, to start with, that the grantor has a right to resume and that it is incumbent upon the holder of the grant to rebut this presumption when once it is

GRANT.

established that the grant is of this nature. As to

…

NAIDU v. RAJA OF VIZIANAGARAM.
(1938) M.W.N. 953=48 L W. 458=
=A.I.R. 1938 Mad 1006.

——*Inam—Rights under—Extent of—Evidence—Grant by pre British Government—Inam title-deed—Value of original grant as evidence.*

The law undoubtedly is that after cession of territory the only enforcible rights in respect of lands ceded, are

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curtail or limit the right conferred by its terms, the

…

Rights officer.

When a Records of Rights Officer comes across an

…

a channel across a public pathway amounts to an infrac-

…

however, the pathway is not a public pathway but a village pathway, the rights to which ar … villagers only, no question of injury would arise by obstruction of the same. … of a lost grant can, therefore, arise in respect of a right to take water by cutting a channel along a village pathway. (*Mukherjea, J.*) JATINDRA NATH MULLICK v SATYA KINKAR SAIN. 42 C W N. 445= 177 I C 53=11 R C. 199 (2)=A I R. 1938 Cal 366

——*Occupancy holding becoming a gr… Disappearance of grove—Grove-holder's … feree of grove plot—Position and rights*

…

GRANT.

revived therein. The transferee of a grove plot forming

…

1938 A W.R. 37 (B.R.).

——*Presumption—Zamindari—Irrigation tank within boundaries of zamindari—Tank not communal property—Government not exercising ownership for over a century—If to be presumed excluded from zamindari settlement—Ownership of tank.*

A tank within the boundaries of a zamindari, which is not communal property but which is an irrigation tank

…

can be invoked

—Right to use water from a particular source for all times.

…

grant, and not where the circumstances show that there

…

right to resume the inams granted for such purposes while the zamindar has no such right. The economic theory on which these villages were constituted or established in the past was that all the necessary amenities for communal life in the village should be

…

village servants or

GRANT.

servants of the community performing services which were necessary for the welfare and continuance of the village community. It is well known that the village ...lages ...rvice ... the ...e art ...aken to have ...

purely p... Such in... by the... *JJ.*) ... SECRE...

——... *Transf*...

proprietor of the grove as he is not the sole Zamindar.

GRATUITY—Book debts—Difference. *See* T. ACT, S 6 (A). 1938 Rang. L.R. 54

tive, that is to prove that such trees w... as a rule they are of spontaneous growt... groveholder, who asserts that they... prove his assertion. (*Drake Brockman J.M.*) KAILASH BIHARI LAL *v.* ...

——*Replacing of fallen trees—Groveholder if possesses right—Custom—*Wajib-ul arz—*Interpretation.*

The right to replace fallen trees is part of the ...mon law rights of a grove holder. Where accord... the *wajib-ul-arz* containing the record of custom ... groves a tenant is stated to be not entitled to repla...

——*When ceases to be one—Tests.*

Though the fact that a major portion of the land in question had been brought under cultivation, may not by itself be sufficient to enable a Court to hold that a grove had lost its character as a grove, yet where the number ... on such land is disproportionately small to the ...

CHANDRA B... 1938 A...

GUARDIA... mother—Cre... extent of. MOTHER...

GUARDIANS AND WARDS ACT (1890), S 9.

——Maintenance—Arrears of—Order issuing warrant against ex-guardian—Legality. *See* GUARDIANS AND WARDS ACT, S. 34. 68 C L.J. 68.

—*Transfer by guardian—Remedy of ward—Suit to set aside—If essential—Repudiation—What amounts to.*

A transaction which is voidable at the instance of the minor may be repudiated by any act or omission of the late minor, by which he intends to communicate the ...

R P. 59 = A.I.R. 1938 Pat. 337.

... WARDS ACT (VIII OF 1890) ...-*Guardian—If includes a* defacto *guardian—Power to order* defacto *guardian to deliver property in his possession.*

...D WARDS ...L.R 64. ...*ta father* ...*—Effect of* ...*pplication* ...*guardian*

...ting ...l so ...ned ...hen ...ower to appoint another person as the guardian or to give another person the custody of the minor child, unless it ...

...but the ...of the ...nor In ...ardian. ...VALLI

I.L.R. 1938 Mad. 767 = 47 L.W. 470 = (1938) M W.N 267 = (1938) 1 M L J. 422.

——S. 9 (1)—*Application by mother for guardianship—Children with father living in Rohtak district—Father obtaining their custody by compromise in ...—Mother living in Ferozepore—Jurisdiction ...zepore court.*

... of minor children, who was living in ...

GUARDIANS AND WARDS ACT (1890), S. 12.

therefore, the Feroze
hear the application
MUNSHI RAM

——Ss 12 and
appointed guardian

——S 17—*Welfare of minor—Consideration as to—If can override law to which minor is subject.*

The Guardian and Wards Act do
Court to subordinate the law to wh
subject to the considerations of wh
minor's welfare (*Harris and Mir*
v AISHA BEGAM.

1938 A

——S 19—Scope—If controls S.

40 P.L.R. 64.

——Ss 25, 4 (5) (b) (ii) and 12—*Application by mother for custody of minor daughter—Minor removed from Court's jurisdiction—Application, if can be granted.*

bei
wh
fev
January, 1937, on the ground that the child ordinarily resided in the Court's jurisdiction and on 2nd February,

GUARDIANS AND WARDS ACT (1890), S. 29.

Recognition of antecedent rights of assignee—Sanction of Court—Necessity.

——S. 29—*Scope—Compliance—Permission obtain-*

and absence of permission for a particular alienation renders it void. Where a permission is applied for a particular mortgage of the Ward's property for a specified amount on certain terms and granted by the Court,
ntly and part of the
is bound
a

executes a mortgage for an
ed in the original sanction
on

GUARDIANS AND WARDS ACT (1890), S. 29.

terms without fresh permission, the mortgage so executed is invalid and unenforceable against the minor, because the former permission cannot cover the mortgage which is different from the contemplated one and executed under different ...

of S. 2

J.) L

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If void

A transfer by the guardian without leave of the Court is only voidable and not void. S 30 says that transaction ...

(*Venkatas*

MALAI G

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——S. 29—*Transfer without sanction—Avoidance—Restoration of benefit.*

In a case where the property of a minor has been conveyed by the guardian without permission of the District Judge, the minor in a suit brought against him, cannot avoid the transfer without restoring the benefit which he has received. (*Collister and Bajpai, JJ.*) JAI NARAIN LAL *v.* BECHOO LAL.

I.L.R. 1938 All. 614=1938 A.L.J. 621=

1938 A.W.R. ...

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Rao and Abdur Rahman, JJ.) SIVANMALAI GOUNDAN *v.* A

1938 M

——S 30—'C

It is clear tha

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NARAIN LAL *v.*

1938 A

176 I.C.

——S 30—S.

Transfer by g

Effect—Suit by assignee—Maintainability—Limitation Act, Art. 44—Suit by minor to set aside transfer—If obligatory

When an assignment by the guardian of a minor of a mortgage to which the minor is entitled is repudiated by the minor, the minor himself filing a suit for recovery of

GUARDIANS AND WARDS ACT (1890), S. 34.

the mortgage money, the assignee has no right to file a suit on the mortgage as assignee and to ask the Court to recognise his transfer. It is not correct to say that the minor cannot repudiate a transfer by his guardian

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(1938) 2 M.L.J. 428.

——Ss. 30 and 31—*Scope—Sanction to guardian to ... or purpose of discharging ... uardian for amount advanc- ... ey on faith of sanction— ... n of money—Bulk of loan ... —Balance applied for purpose not sanctioned—Creditors right to claim whole amount of loan—Proof of necessity.*

Where a guardian of a minor appointed under the Guardian and Wards Act obtains the sanction of the Court authorising him to execute a mortgage of the minor's property and to borrow a certain amount for the purpose of paying off a mortgage decree against the estate, and executes a mortgage for the amount authorised by Court, and no fraud or underhand dealing is alleged, the ...

——S. 31—*Holding of enquiry—If essential—*

A.I.R. 1938 Oudh 65

——S. 34—*Arrears of maintenance due to minor—*

GUARDIANS AND WARDS ACT (1890), S. 35.

the minor's estate to the new guardian is bad, when the ex-guardian has no property of the minor in his hand and has made it over to the new guardian and has submitted accounts If on the accounts anything is found due from him to the minor, appropriate steps could be taken against him for the recovery of the said amount. (*R. C. Mitter, J.*) GOLAM KADER HALDAR v. MOHAMMAD ABDUL RASHID 68 C.L.J. 68.

——S. 35—*Security bond by ... immovable property for due per... Breach—Assignment of bond by C... ed guardian—Assignment by la... latter attaining majority—Suit ... bond—Competency—T.P. Act, S. ... sue.*

Where a person appointed as ... under the Guardians and Wards ... bond in favour of the Court ... account for all the movable pro...

assignment is perfectly valid and entitles the ward to sue on the bond and to enforce its terms (*Pandrang Rao and Venkataramana Rao,* ... AYYAR v KRISHNA AYYAR.

——S 41 (3)—*Direction to ... when permissible*

Where the only object is to protect the ... perty the object can well be served by ... charged guardian to furnish solvent ... ment of any amount that may be found ... of accounts. It is hard on a guardi... upon to deposit a large amount in ca... ABAJI v. DAMODAR ABAJI. 193.. N.L.J. 202= 176 I C 693=11 R N. 68=A.I.R 1938 Nag. 399

——S 41 (3) and (4)—*Discharge of guardian—Discretion—If unfettered—If revisable*

HABEAS CORPUS

When the *quondam* guardian has complied with the directions of the Court under sub S. (3) ...

... and Mockett JJ.) RAMACHANDRAN v. BALASUBRA...

40 P.L.R. 532.

S. 47 and 48—*Provision for maintenance in order appointing guardian—If appealable.*

Where in an order appointing a guardian a provision ... he ... ne,

A.I.R. 1938 Nag. 495.

HABEAS CORPUS ...

tribunal to which an application for *habeas corpus* can be made and must hear them on the merits. The jurisdiction is of a peculiar and exceptional character as every Judge has it and not merely the High Court

HIGHWAY.

1938 M.W.N. 1161.

HIGHWAY—*Dedication—Inten*
from long user.

Where the roofs of a shop have
trians for access to the neighbouring
long time, such user does not necessarily raise a presumption as to dedication in every case. There must be an intention to dedicate, of which the user by the public is mere evidence and no more. A single act of interrup-

public—It may be presumed.

When a man builds a row of houses with a passage in front and the passage opens into an existing public highway at each end and he sells and lets these houses and thus invites others to come and use the passage, a presumption may legitimately be drawn that he intended to dedicate it to the public. The question, however, is

——*Private street—Persons having wall facing street—Right to make openings in wall.*

Where a street which is the private property of an individual is accessible to the public, any one has a right to make openings in his own wall facing such a street. Hence the owner of such street cannot obtain injunction restraining such person from making such openings. (*Skemp, J.*) LACHHMI NARAIN *v.* MANAK CHAND. A.I.R. 1938 Lah. 841.

——Procession—Right to conduct in public street and

law right of access to the public road exists equally in the case of roads vested in a municipality, and is not automatically extinguished by reason of the fact that the Municipality under its statutory powers leases out a

pality. (*Dhavle, J.*) DWA
PATNA CITY MUNICIPALITY
4 B.R. 806=177
19 P.L.T. 51

HINDU LAW.

trate and the rights of the public, and it is

——*Use as a public path—Presumption of dedication from long user.*

Where it is found that a path has been used as a

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HINDU LAW.

HINDU LAW—Adoption.

The giving and taking ceremony is the essence of adoption and the law does not accept any substitute for it. Mere expression of consent or execution of a deed of adoption though registered but not accompanied by the actual delivery of the boy does not operate as valid adoption. (*Abdul Qayoom, C. J. and Wazir, J.*) PARASRAM *v.* PANJABOO. 40 P.L.R. J. & K. 42.

——*Adoption—Effect of—Divesting of estate—Limits of the rule.*

Whatever doubts there may be about divesting in

PUNAMCHAND. 1938 N L J 176

——*Adoption—Effect of—Divesting of property vested—Principle underlying*

A person in whom the property is
death of the sole surviving member of
takes it subject to a defeasance in t
adoption by the widow of a predeceased member of the former joint family The adopted son must get such interest as his father would have got had he been alive at the date of adoption. When a deceased coparcener's widow adopts a son to her husband, he acquires his father's interest notwithstanding that it lapsed to the survivors. It is the right of the adopted son and not the existence of the co-parcenary that is the true criterion for determining the judicial effect of the adoption. (*Stone, C.J. and Niyogi, J.*) MT. DRAUPADI *v.* VIKRAM. 1938 N L J. 237= A I.R. 1938 Nag. 423.

——*Adoption—Prior gift by a*
dity as against adopted son—Ado
same transaction—Validity of

dent partition

(*Beaumont, C. J.*) An adopted son cann
a partition effected before he was adopted.
C. J and Wassoodew, J.) CHANBASAP
HAPPA 40 Bom

HINDU LAW—Adoption.

——*Adoption—Who can debt ——Right of unmarried man.*

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M.

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Validity among Desasta Brahmins of Belgaum in Bombay—Custom as to.

There is a well recognised custom prevalent among the

It must be taken to be the rule among Sudras that the adoption of a sister's son is valid unless in the particular case with reference to the particular community there is

——Adoption—Widow—Absence of sapindas—Widow if can adopt of her own volition. *See* HINDU LAW—ADOPTION—WIDOW—MADRAS PRESIDENCY. A I R. 1938 P.C 34.

——Adoption—Widow— Assent of Sapindas —If confined to agnates of husband. *See* HINDU LAW—ADOPTION—WIDOW—MADRAS PRESIDENCY. A.I.R. 1938 P.C. 34.

——*Adoption—Widow—Authority to widow to adopt—Construction—Will by husband authorising adoption by pregnant wife in case latter gave birth to son and*
daughter—Adoption by
estopped from dis-

association of wife in an act of adoption by the husband

Under the interpretation of the Mitakshara law, as generally accepted in the Madras Presidency an adoption by a widow would be valid only if made under the authority of the lady's husband, or failing that with the assent of his kinsmen. Though the requisite authority need not necessarily be express,

tute an implied authority there

evidence of a cogent character.

to show that the husband ever contemplated a second adoption, or that he was prepared to leave the selection

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19 Pat L T. 169=1938 A.W.R. (P C.) 62=66 C.L J 581=40 Bom L R. 704=47 L W. 110=1938 O.W.N 117=172 I.C. 724=1938 O L R 61=1938 O.A. 54=1938 A.L R. 77=A.I.R. 1938 P.C. 34=(1938) 1 M L J. 426 (P.C).

——*Adoption—Widow—Partition between two branches of joint family—One branch consisting of only one male member and widow of latter's paternal uncle—Adoption by widow—Validity—Right of adopted son to share in family property.*

N. and *P*, who were sons of *B*, were members of a joint Hindu family along with the des
brother *V*. *P*. died in 1923, leaving a w
on *N*. also died leaving a son. In 19
partition between *N's* son on the one
descendants of *V*, who formed the oth
son got a half share, which was made
maintenance of *P's* widow, and the oth
the other half share and the membe
branch continued to live joint as between
1933, *P's* widow adopted the plaintiff

was his abso

challenge the partition of 1932, which could not be re-opened, (2) that *N's* son on partition with the other branch in 1932 took the half share as joint family property and not as his absolute property, and though he and the widow of *P*. were the only members of the joint family, it could not be said that the co parcenary

the surviving co-parceners could effectively bar the adopted son of a deceased co parcener from claiming a share in the family property would have the effect of frustating

HINDU LAW—Adoption.

the right of adoption of a widow of a deceased co-parcener (*Beaumont, C. J. and Wassoodew, J.*) CHENBASAPPA *v.* HUCHAPPA. 40 Bom. L R. 1185.

——*Adoption—Widow—Powers—Authority given by will—Suggestion as to boy to be adopted—Executors to*

of the executors.

Where a Hindu widow was directed by the will of her husband to adopt a particular boy and if he was not available any other suitable boy, and where the will

adopt however strong the direction of her husband

——*Adoption—Widow—Powers of—Joint family consisting of father and son—Death of son before father leaving widow and daughter—Death of father—Property inherited by widow of father—Subsequent adoption by son's wife—Validity—If divests property vested in fathers widow—Rules.*

Where after the termination of the co-parcenary by

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Held that the adoption though valid for spiritual

ANANDIBAI *v.* VASUDEV. 40 Bom. L R. 1201.

——*Adoption—Widow—Powers of—Prohibition by husband implied from disposition of property and direction as to performance of funeral rites in will—Effect of—Consent of sapindas—Value of.*

If there is a prohibition by her husband against adoption, an adoption by her even with the consent

plation to permit an adoption which might in any way conflict with his disposition expressed in the will and that the dispositions could not be given effect unless the adoption was prohibited, a prohibition

has to be implied A testator died leaving him surviving his widow *L.* and two daughters by a predeceased wife. *K* and *J. K* had a son *V* and a daughter *V. J* had a daughter *N* and a son *G.* He left a will which after reciting that he was 70 years old and had no male issue made a complete disposition of his property and effected a [illegible]

L. was [illegible] making a disposition anything which remained over and above what she had alienated should be enjoyed by each of the daughters and their descendants in equal shares. His widow was to enjoy his residential house for her life and thereafter his daughters and their descendants were to enjoy it in equal shares absolutely In the last portion of the will the testator er[illegible] penses of his funeral obsequies, *I* [illegible] 250 and *V*, Rs. 250 and that [illegible] krityam and other ceremonies.

Held, that the widow had no [illegible] tion to her husband and that if an adoption were adopted it would frustrate the expressed wishes of the testator both as regards the disposition of the properties and as to the performance of his funeral rites (including therein not only the immediate ceremonies but also the monthly and annual ceremonies which ought to be customarily performed to a deceased).

Held, further, that even if it be held that there was no total prohibition of an adoption for ever, the widow was clearly under a disability to adopt so long as *V* was alive and capable of performing the ceremonies which would confer religious benefit on the testator. (*Venkataramana Rao, J.*) PANCHAPAGESA IYER v. GOPALAN. 1938 M.W.N. 1180=48 L W 887.

——*Adoption—Widow—Power to adopt—Extent and limit.*

[illegible]

There is no text, no authority and no reason why a properly authorized widow governed by the Mitakshara School of Hindu Law should not adopt a son, even if [illegible]

fiction relate back to any point of time before its own [illegible]

as it stands at the date of the adoption that he succeeds. If the joint family of which the adoptive father was a member has ceased to exist before the adoption takes place by reason of a partition, there is no coparcenary into which the adopted son can enter, and the adopted son can therefore get no right to share in the property which once belonged to the joint family which [illegible] before his adoption was made. [illegible] *d Abdul Ghani, J.*) SANKARAMMA [illegible] 16 Mys L J. 376=43 Mys. H C R. 415.

—— *Widow—Powers of adoption in Mysore—Death of last male owner—Subsequent adoption by widow of predeceased co-parcener—Validity—Estate already vested in collateral heir—If divested*

Under the Hindu Law prevailing in the Mysore State, an adoption by the widow of a deceased coparcener of a son to her deceased husband subsequent to the death of [illegible]

Nageswara Iyer, JJ.) DASAPPA v. SESHAGIRI RAO. 43 Mys. H C R 438=16 Mys L J. 301.

——*Adoption—Widow—Power to adopt—Last surviving coparcener's widow consenting to adoption by a predeceased coparcener's widow—Effect on the former's right to adopt.*

Where the widow of the last surviving coparcener consents to an adoption by the widow of a predeceased coparcener, that does not take away or destroy her inherent right to adopt, which she may exercise either during the lifetime of the other adopted boy or after his death (*Stone, C.J and Niyogi, J.*) MST. DRAUPADI v VIKRAM. 1938 N.L J. 237=A.I R. 1938 Nag 423

——*Adoption—Widow—Power to adopt—Hindu dying leaving surviving him his widow and his son's widow—Adoption by son's widow during lifetime of [illegible]—Validity.*

[illegible] indu dies leaving behind him his own [illegible] widow of his predeceased son an adop- [illegible] the lifetime of the [illegible] whose widow [illegible] the lifetime of [illegible] w of the father and she cannot be divested or the estate by any act of [illegible] the time of the adoption holds [illegible] and is merely entitled to a [illegible] *Din Mahomed, JJ.*) PIARE [illegible] 0 P.L R 824=178 I C 515=A.I R. 1938 Lah. 539.

——*Adoption—Widow in Bombay—Powers of—Widow inheriting to last male holder as gotraja* [illegible] *—Validity—If affects devolution*

[illegible]

end, does not operate to divest property vested in or [illegible]

HINDU LAW—Adoption.

and thereupon the property passed to the latter's mother *L.* *L* died a year later, and the property passed to *D's* mother *B.* *B* died some years later, and the property then passed to the 1st defendant who later on adopted defendant No 2. Plaintiff, a reversioner, claiming through a collateral branch of the family sued for declaration that the adoption was illegal and void and not binding on him.

Held, that the adoption was valid, but that it had no effect on the devolution of property ... plaintiff. (*Beaumont, C.J., Broomfield JJ.*) RADHABAI DAMODAR *v.* RAJAR ...

I.L.R. 1938 Bom. 679 = 177 I.C. 165 = 11 R.B. 68 = 40 Bom L.R. 559 = A.I.R. 1938 Bom 383 (F.B.).

——*Adoption—Widow—Subsequent alienation—Validity—Agreement between adopting widow and natural father of adoptee—Agreement permitting widow to deal with estate at her will without regard to adopted son's rights and interests—Validity*

An arrangement between the adoptive widow and the natural father of the adopted boy which permits the widow in practice to deal with the estate at her own sweet will without any reference to the rights and Interests of the adopted son is not binding on the adopted son. At the time of adoption of a son an agreement was entered into between the adopting widow and the natural father of ... effect, that the wic... and enjoy all her ... time and after her d... possession thereof a... alienations thereafter of practically the whole of the estate. The adopted son ... and for ... that the ...

——Alienation.
After born son.
Antecedent debt.
Benefit to the family.
Co parcener's mortgage for private debts
Father.
Guardian.
Illegal transfer by adult members.
Junior members
Manager
Validity.
Widow.
Authority
Imprudent transaction.
Necessity.
Powers

HINDU LAW—Alienation.

KOTRAYA *v.* MALLAPPA BASAPPA.

40 Bom. L.R. 1029 = A.I.R. 1938 Bom. 500.

——*Alienation—After-born son—Right to set aside—Father's alienation.*

Where the only other coparcener in existence besides the father at the time of an alienation of family property by the father is a minor, that son alone is entitled to sue to avoid the alienation of his share of the family property. His right is personal ...

... after the alienation though before his death, because the right to challenge the alienation is confined to coparceners alive on the date of the alienation. (*Newsam, J.*) PAPPU REDDI *v.* APPAJI NAYAKKAR.

1937 M W.N. 1261 = 174 I.C 838 = 10 R.M. 744 = A.I.R. 1938 Mad. 224.

——*Alienation—Antecedent debt—Meaning of—Mortgage for money borrowed for taking* zarpeshgi—*Mortgage contemplated at time of taking* zarpeshgi *but executed later—If antecedent.*

Antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached. The two transactions may be entirely dissociated from ...

... taking a *zarpeshgi*, but is executed some weeks later, it ... independent transaction. (*Wort and Rowland, JJ.*) RAMKARAN THAKUR *v.* BALDEO THA...

...*ed.*

... —It is impossi...

——*Alienation—Coparcener—Mortgage of joint family property to secure private debts—Mortgagee taking mortgage with knowledge of private character of debt and of property being joint family property—Subsequent partition—Allotment of mortgaged property to member not mortgagor—Remedy of mortgagee—Sub-*...

... private debts of the mortgagor, he takes the same subject to the right of the other members of the family to enforce a partition ...

HINDU LAW—Alienation.

Varadachariar, J.) MANICKAVELU CHETTY *v.* SATEEDAN SOWCAR. 1937 M W N. 1340

——*Alienation—Father—Alienation not supported by necessity—If void or voidable.*

An alienation of ancestral property by a Hindu father without legal necessity or justifying cause is not void *ab initio*, but voidable, and can only be avoided by his son who can also satisfy the alienation (*Kangnekar and Wadia, JJ*) [illegible]

40 Bom. L.R. [illegible]

——*Joint fam*[illegible] *lity When can absolve family from liability—Advances to head of family business—Duty of lender.*

Mere proof of immorality of the father of a joint Hindu family will not absolve the family from liability It must be further shown that there is some connection between the debt and immorality. The duty of a lender to enquire is the same in all cases and applies also to cases of loans to head of a family having trade as its business While a lender has not got to see to the application of the money, he is put on enc[illegible] must satisfy himself that the loan is nec[illegible] fact that the lender is dead and, therefore, [illegible] what enquiries he made does not relieve his [illegible] the necessity of showing that there were proper inquiries. (*Leach, C.J and Madhavan Nair, J.*) NANNU SHANKAR TAWKER *v.* BASHYAM IYENGAR

1938 M.W.N 126=47 L.W. 307=(1938) 2 M.L.J. 256.

——*Alienation—Father—Mortgage by—Decree for sale on—Sale in execution—Suit by sons impeaching—Burden of proof—Illegality or immorality of mortgage debt—Duty of sons to establish.*

[illegible]

—*necessity.*

A mortgage executed by a Hindu father for money borrowed for the purpose of carrying on a litigation to [illegible]

HINDU LAW—Alienation.

inquiry and acts honestly the real existence of an alleged sufficient or reasonably credited necessity is not a condition precedent to the validity of the alienation by way of mortgage. Nor is the creditor bound to see to the application of the money. What is a legal necessity or what is for the benefit of the family cannot admit of one single and uniform answer. It must depend on the circumstances of each case. A transaction entered into [illegible]

A.I.R. 1938 Bom 350.

——*Alienation—Father — Mortgage by—Validity against sons—Absence of proof of necessity or of antecedent debt—Debt not shown to be immoral—Sons—If bound.*

The law is perfectly clear that an alienation by a Hindu father for an antecedent debt binds the interests of his sons in the property alienated if it is not proved that the debt was immoral. But a mortgage by the [illegible] and not for an antece[illegible] interests in the pro[illegible] was contracted for an [illegible]ssary in that case to show that the debt was an immoral debt. (*Broomfield and Macklin, JJ.*) ASMAN *v.* GANPAT.

40 Bom L R. 946=178 I C 401=A.I.R. 1938 Bom. 443.

——*Alienation —Father — Necessity— Daughter's marriage expenses—How far justifies alienation—Father spending large amount on marriage—Sons, if bound—Extent of liability—Reasonable amount of expenditure for marriage—Limit of.*

[illegible]

Rights Regulation (X of 1933). That should be the upward limit of the amount of the joint family funds [illegible]

HINDU LAW—Alienation.

gage. (*Rangnekar and Wadia, JJ.*) GOVIND GURUNATH *v.* DEEKAPPA. 40 Bom.L.R. 539= 177 I.C. 290=11 R.B 74= A.I.R. 1938 Bom. 388.

174 I.C. 82=1938 A.L.R. 237= 10 R.A. 546=A.I.R. 1938 All. 100.

———*Alienation—Widow—Imprudent transaction.*

The mere fact that a widow entered into an imprudent transaction is n... ed by her on re... *JJ.*) JOTI L... 1

A.I.R. 1938 Pat. 281.

———*Alienation—Widow— Necessity—Alienation for expenses of litigation for protecting widow's right to*

(*Ismail, J.*) RAM... 1937...

———*Alienation—Widow—Necessity—Proof—Consent by reversioner—Presumption.*

Consent of the reversioner to an alienation made by the widow is presumptive proof of necessity and the presumption may be controverted by other evidence. (*Madhavan Nair and King, JJ.*) THIMMANNA BHATTA *v.* RAMA BHATTA.

A.I.R. 1938 Mad. 300.

———*Alienation—Widow—Necessity—Proof—Recitals in document—Value of—Absence of recitals of necessity —Lapse of time—Effect of.*

deed of alienation does not contain recitals of such necessity. (*Madhavan Nair and King, JJ.*) THIMMANNA BHATTA *v.* R...

———*Alienation — expenses—Expenses*

HINDU LAW—Applicability.

But she is not entitled to transfer her husband's estate ...enerally. (*Ismail, J.*) RAM ADHAR MISIR. 1937 A.W.R. 1223= ...1=174 I.C. 82=1938 A.L.R. 237= 10 R.A. 546=A.I.R. 1938 All 100.

———*Alienation—Widow—Powers of to dispose of shares of illegitimate sons of husband.*

A Hindu widow has no power to alienate her husband's ...

———*Alienation by widow—Setting aside—Suit for—Proper decree—Order for payment by one party to opposite party—Power of Court to pass.*

In a suit to set aside a transaction by a Hindu widow on the ground that it is not justified by legal necessity, ...e Court to pass is that the sale is not justified; if it were justifi... But no question of payment either by one party or the other to the opposite party can possibly come into the Court's consideration. Nor is the Court entitled to enquire into the consideration for the ...

...titled to retain possession of proper... the lifetime of the widow on pay... ...th interest thereon. ...that the order was wrong and should be set ... ALODHAN KUAR ... 173=4 B.R. 591= ...R. 1938 Pat. 194.

—Consent of next reversioner—Effect of. *See* HINDU LAW—FAMILY ARRANGEMENT. 1938 P.W.N. 125.

See also HINDU LAW—WIDOW—ALIENATION.

———*Applicability—Claim to belong to regenerate class—Tests to be applied—Panchals, if belong to regenerate class.*

The criteria to be applied in determining a question whether a particular caste or community belongs to the twice-born classes are (1) the consciousness of the caste, (2) its customs, and (3) the acceptance of that consciousness by the other castes. Applying the above criteria ...

custom or usage varying the law. (*Weston.*) CHAND KOER *v.* PEM RAJ 1938 A.M.L.J 79.

Succession—Stridhan ...laughter—Right of in

...Law as to succession ...

HINDU LAW—Applicability.

of her mother with an unmarried daughter. (*Collister and Bajpai, JJ.*) JAIWANTI v. ANANDI DEVI. I.L.R. 1938 All. 196=1937 A.W.R. 1184=1937 ...

—— ... and ... grandson—Rule as to—Applicability of.

The rule of Hindu Law as to the pious obligation of the son and grandson to pay the father's and grand father's debts is not applicable to Nambudris of Malabar. (*Varadachariar and Pandrang Row, JJ.*) NARAYANA AIYAR v. MOORTHI KENDAN. I.L.R. 1938 Ma... 47 L.W. 532=1938 M.W... A.I.R. 1938 Mad. 643=(1938) 1 M...

——Dancing girls—Adoption—Ceremonies ... tion of two daughters—Validity—Custom.

No particular ceremony is necessary for an ... by a devadasi and there is no legal objection to ... tion of two daughters by a dancing girl prov... such a practice is sanctioned by the custom of ... munity. (*Wadsworth, J.*) GANGAMMA v. ...

... partition.

The practice of adoption among devadasis in Madras has nothing to do with religious benefit but is purely a custom arisi... that class to ... ed daughter ... cannot be sa... nised by the ... the daughter ... partition o... mother on ... (*Wadsworth* ...

——Danc... purposes of prostitution—Validity and effect of.

The adoption of a minor by a dancing girl for pur-...

Avyavaharika.
Coparcener
Father
Joint family business.
Guardian
Manager
Trading family.
Widow

——Debts—Avyavaharika ... against father—Liability of ...

The trend of authority is i... debt which is repugnant to g... rika debt and in each case ... Court to decide whether the debt in question is repug-... obtained ... because of ... which the son and the joint ancestral property is not under an

HINDU LAW—Debts.

obligation to discharge. (*Collister and Bajpai, JJ.*)

——Debts—Avyavaharika—Damages for malicious prosecution—Debts to pay off such decrees—Binding nature.

Where there were several decrees against the father for damages for malicious prosecution his acts in making the malicious complaints are tortious acts. They are illegal, immoral or improper acts and the pecuniary liability arising therefrom is not binding on his sons and ...

SERVAI. 1938 M.W.N 838=48 L.W. 271=(1938) 2 M.L.J. 399.

——Debts—Avyavaharika—Decree for compensation ...

clearly repugnant to good morals and hence the sons were not liable in respect of that decree debt. (*Bennet* ...

The rule of exemption from payment of illegal or ...

while protecting the son's right, as far as possible, is designed to prevent ill-advised and reckless attacks.

The joint family property cannot be taken in execution of a decree passed against the father for payment of a debt, which is found to be for immoral purpose. (*Bennet and Verma, JJ.*) BED RAM SINGH v. INDERJIT SINGH. 1938 A.L.J. 644=1938 A.W.R. (H.C.) 510=176 I.C. ...

11 R.A. 136 = 1938 A.L.R. 669 = A I R. 1938 All. 437.

——*Debts—Avyavaharika —Immorality—Connexion*

trusted to pay in the land revenue, borrowed certain amount for the purchase of some property, which purchase was never effected.

Held, that there was a connexion between the mort-

binding on sons.

Where money is advanced to a Hindu father on the strength of an agreement to execute a mortgage

however, be a genuine agreement and not a device for evading the law.

Varadachariar, J.—There is a real distinction between cases in which the lender and the borrower contemplate the giving of security only as a future possibility and cases in which from the template only a mortgage loan.

——*Debts—Father—"Antecedent debt"—Purchase of*

executes a mortgage for the purpose of raising money to pay the purchase money, it cannot be said that the mortgage debt is an antecedent debt so as to be binding on

usufructuary mortgage taken by him—If binding on son.

There is no warrant for holding that the liability of a Hindu son to pay the antecedent debts of his father

1938 A.L.R. 207 = A I R. 1938 All. 44.

Debts—Father—Award against Co-operative in which father is a member—Liability in

A I.R. 1938 Nag 434.

—— Debts—Father's debt—Pious obligation of son—

debt as ty—Death to claim judgment-debtors—Pious obligation—If a bar. *See* CONTRACT ACT, S. 43. (1938) 2 M L J. 287.

——*Debts—Father — Decree against — Executability against sons' shares—Pious obligation.*

A debt, secured or unsecured, contracted by the purpose, immoral sons and if ne, it may be coparcenary erty. In such a case the decree-holder can proceed execution against the sons' shares and need not pro- by a separate suit. (*Stone, C.J. and Bose, J.*)

JAINARAYAN *v* SONAJI. I L R 1938 Nag 136 = 174 I C. 621 = 10 R N 408 = A I.R. 1938 Nag. 24.

ree for costs against—Suit ard family interest—Sons.

HINDU LAW—Debts.

Where a decree for costs is passed against a Hindu father, who resisted a suit for specific performance in the interests of the family and as a man of ordinary prudence would have done, the action of the father is in no way contrary to good morals and hence the sons are liable to pay the decree after the father's death. (*Bennet, A.C.J. and Verma, J.*) RAM LAL MISIR v. JAGDISH TEWARI. 1938 A.W.R. (H.C.) 630= 178 I.C. 318=1938 A.L.J. 952=

——Debts—Father—L… terest if could be proceed… S. 145 …

——*Debts—Father—S… sued in representative … suit by sons impeaching m…*

Where on a mortgage ex… is sued in his representative capacity and a decree obtained thereon, that cannot operate as *res judicata* as against the sons in a suit brought by them to question the mortgage on the ground that the consideration was given for immoral purposes (*Misra, J.*) RAJESHWAR DUBE v. RAM SUNMUKH MISIR

1938 A.W.R. (H.C.) 709=1938 A.L.J. 1053.

——*Debts—Father—New business started by father—Mortgage for antecedent debts and for fresh cash advance—Liability of minor son—Latter's share in family property—If can be proceeded against—Pious obligation of son—Suit against son after father's death—Limitation.*

A Hindu minor son's interest in the joint family property is bound by, and … fying a debt incurred by his … a new business started by … the son's pious obligation … The pious obligation of a … debts under a mortgage … part of which consists of … of cash advance, can be d… regard to the former the … minor son's interest in the property but with regard to the latter (cash advance), though the minor son would not be bound by the debt as a mortgage debt, his interest in the joint family property would be liable for that debt by virtue of the fact that it is a debt of the father, and the son's interest is therefore liable to be sold in execution of a money decree against the father. This liability can be enforced even in a suit brought against the son after the death of the father. In the case of a mortgage which is registered the period of limitation for a suit against the son for a money decree, is the same as …

11 R.B. 1 (2)= …

——*Debts — Father — Pre-p… against father alone after partit… son's share—Right of creditor.*

A creditor who chooses to obt… Hindu father alone after a partit… and the son, in respect of a debt … tion cannot proceed to execute the decree against the property in the hands of the divided son. Though partition does not put an end to the son's liability for a …

HINDU LAW—Debts.

1938 M.W.N. 525=A.I.R. 1938 Mad. 578= (1938) 1 M.L.J. 875

——*Debts—Father—Pre partition debt—Renewal of debt by father alone after partition—Suit by creditor—Liability of sons—Pious obligation.*

A Hindu father has no authority after partition to renew a promissory note debt borrowed before partition so as to make it binding on his divided sons. Such renewal entirely wipes out the original debt, and by the …

1937 M.W.N. 1306.

——*Debts—Father's debt—Son's liability—Attachment of father's share before judgment—Death of father's—Son impleaded as legal representative—Decree and sale of son's share—Validity — Right of other Co-parceners to question.*

Under the Hindu law no co parcener other than a male descendant is liable for the personal debts of a deceased co parcener when the latter's share in the joint family has survived to him. But an exemption is made in cases where the share of the deceased had been effectively attached during his lifetime. Where the deceased co parcener has left a son, the son's share is liable for the father's death notwithstanding that it …

——*Debts—Father's personal debt not charged on family property—Son's liability—Pious obligation—When arises—Debt contracted by father prior to birth of son—Absence of necessity—Son's right to challenge creditor's right to recover from family property during father's life time—Law in Mysore.*

A Hindu son in Mysore is entitled to challenge a debt contracted by his father, when it is a mere personal debt and when it is contracted for purposes not binding on the family, although the debt may have been contracted by the father before the son's birth. Under the …

——*Debts of father—Son's right to question—Scope and extent of—Award executable against father as a decree—Son not a party to award, if can challenge it in* …

HINDU LAW—Debts.

others are not bound and they can fight the decree or award in exactly the same way as they could have done, if they had been joined in the first instance. Where

who was not a party to the award,
the execution stage of the proceedings
can attack it on all the grounds availa
ding those that would have been ope
urge, he could obtain relief
share in the family property.
NARAYAN v CO-OPERATIVE
MALKAPUR

178 I C. 293 = 1938 N.L J. 82.

——*Debts—Father—Speculative transaction—Liabi*

RA

is binding on the joint family, being for the benefit of the family. (*Stone, C.J and Vivian Bose, J.*) GANGARAM CHOTURAM v. CHAPSI KUWARJEE.

A I.R. 1938 Nag. 431.

——*Debts — Guardian — Testamentary guardian authorized to carry on business of minor—Promissory note by—Liability of minor—Creditor's right of direct recourse.*

minor also

run the business, was entitled as against the minor beneficiary to be indemnified out of the assets of the

HINDU LAW—Debts.

ness. (*Rangnekar, J.*) VISHWANATH GANSHET v. RAGHUNATH GANU. **40 Bom.L R. 458 = 176 I.C. 830 = 11 R B. 50 = A.I.R. 1938 Bom 344.**

creditor can get a decree directly against the assets it must be shown that the guardian has a right of indem-

id owing by him to
his transactions.
AYYAR v. RAMA-
R. 1938 Mad 265.
note by manager

for his own urgency for purchasing land—No recital that he was manager or that purchase was for family—Subsequent partition—Property purchased divided among members—Liability of family for debt.

The first defendant who was the elder brother of defendants 2 and 3, all of them being members of a joint Hindu family, executed a promissory note to the plaintiff on 23-4-1919 which recited that the amount

ne note claiming a decree

hat the land purchased in
fendant was subsequently
endants did not by itself
intended for the benefit of
of fact it resulted in any
, and that the 2nd and
3rd defendants were therefore not liable on the note.

——*Debts—Manager—Promissory note or hundi executed by—Suit on—Liability of other members of*

inction be-
ebt is con-
r hundi or
bt is con-
necessary

HINDU LAW—Debts.

to make all the members of the family liable is that the debt should have been contracted for family necessity or for the benefit of the family. There is nothing in the Negotiable Instruments Act which precludes a Court from applying the principles of Hindu Law to a suit based on a negotiable instrument. All the members of a joint family are therefore liable to be sued on a promissory note or hundi executed by t... provided it is established that the r... under the instrument for joint family ... *ney-Terrell, C.J and Fazl Ali,* ... PRASAD v. BINDA PRASAD SINGH.

——Debts—Promissory note by ... of father and eldest son—Death of ... and endorsement by junior sons—If ... against eldest converted son. *See* ... S 20. 1938 M W.N 981=48 L W. 452.

partnership has to be regarded as an extension of the

In the absence of proof by plaintiff creditor that the acknowledgment was made on behalf of and with the authority of those other members, it binds only the persons making it. (*Beasley, C.J.*) NARAYANA IYER v. NARAYANA IYER 1937 M.W N. 1312

...under construction—If for legal necessity.

In a suit upon a hand-note executed by a Hindu widow against the reversioners succeeding to the estate, on the ground that it was executed for necessity, to prove the mere nature of the purpose for which the money is

HINDU LAW—Family arrangement.

on the reversioners to the estate. (*Courtney Terrell, C J. and Madan, J.*) RAMSEWAK MISRA v. JAMUNA PRASAD SINGH. 172 I C 24=1937 P W N 835=10 R P. 329=18 Pat L T 810=A.I.R 1937 Pat. 667.

——*Family arrangement—Declaratory suit by rever-*

...reversioners' suit and ... the plain- ... r that as it ... f the plain- ... at a time when no one contemplated that an Act would be passed

——*Family arrangement—Dispute between widow and brother of last male-holder—Ekrarnama executed by widow, brother and daughter of deceased—Validity as against daughter—Right of latter to impeach as invalid after widow's death—Alienation by widow—*

... widow applied ... one half of the ... property of the family and prayed that her name should be mutated as regards the abs... This was ord... aside on the ... family, who w... afterwards an ekrarnama was executed by the widow,

Lall, JJ.) RAMPEVARI KUER *v* RAMDHANI SINGH 1938 P.W.N. 125=A I R. 1938 Pat. 476

——*Family arrangement—Validity— Arrangement between some members of family.*

Even though some members of a family do not join a family arrangement, the arrangement will still be a family arrangement and will be binding on those who ...

1938 O L R. 157=1938 O A. 259= 10 R O. 246=A I.R. 1938 Oudh 110.

——*Family arrangement—Validity—Conditions.*

The arrangement to be a valid family ... must be one concluded with the object of ... *fide* a dispute arising out of conflicting cl... perty, which was either existing at the ... likely to arise in future *Bona fide* is the ... validity, and from this it follows that there must be ...

... tially one to which the formal assent of the members of the family and the members of the governing body was taken, for the purpose of curir... settlor to revoke what he had done does not constitute a family arrang... Cal. 600 Foll. (*Khundkar, J.*) ... *v.* ASHMANTARA DEBI A...

——*Family arrangement—Val... Claims made—If to be just.*

It is not necessary that a family ... valid, must evidence just claims; even though the claims might, if founded (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) KITTAMMA *v* SESHAMMA. 43 Mys H C R. 43= 16 Mys L J. 232

——*Family settlement—Essence of—Property admittedly belonging to one of parties allotted to other—Ownership, if transferred—T. P. Act, S. 123.*

The essence of a family settlement is a mutual recognition of a pre existing right ... settlement A transaction by wh... admitted title to which rests in ... transferred to one of the other ... within the definition of a family ... that *qua* that property there w... ownership But the transfer m... registered and duly signed and ... under S 123 of the T P Act. (*Zia ul-Hasan, J.*) ... WAJID ALI *v* G... 1938 O L R. 122= ...

——**Gift.**

Construction.

Nature of estate.

Validity.

——Gift by adopted son in favour of Hindu Widow —Absence of words of limitation — Effect—Estate conferred. *See* TRANSFER OF PROPERTY ACT, Ss. 8 AND 122. 39 Bom. L R. 1217.

... —*Gift in favour of Hindu ... e-estate or absolute estate— ...* kshis patra—*Provision that ... erty perpetually and as the ...* उप भोगस्वावा—*If import ... enance—Law in Bombay—*

... e drawn in the case of a gift in favour of a Hindu widow or other female that the donor does not intend to confer an absolute estate. In Bombay, sisters and daughters do take absolute interests even by inheritance, and it would not be reasonable, merely because the donee happens to be a female, to start with a presumption in favour of the gift or transfer being limited. Merely because the purpose of a document ...

... in adoption by the senior widow of a deceased Hindu with the concurrence of the junior widow executed in favour of the junior widow a deed of gift, which was ...

... property and that he gave her in her possession by way ... ation in ... njoy the ... ike... when I am not drunk and with my full knowledge and of my ...

... suggesting that the deed was made only with a view to make a provision for maintenance and as therefore conferring only a limited estate; that since the words "for maintenance" were not found in the gift deed itself no oral evidence should be allowed to have the effect of introducing those words in the document; and (4) that ...

... woman.

Where there is no evidence as to the nature of a gift ... re is no ... either ... on who ... fail for want of proof. (*Jack, J.*) MANYAMOYI DASI *v* SAUDAMINI DEBI. 42 C.W.N. 1053.

——*Gift— Validity—Delivery of possession — If necessary*

Under Hindu Law, a gift is not valid unless it is accompanied by delivery of possession. Where the

HINDU LAW—Gift.

donor, who is in possession at the time of making the gift, does not deliver possession of the property to the [illegible]

BHAGAT [illegible] 10 R.N. 274 = A.I.R. 1938 Nag 142.

——*Gift—Validity—Gift in favour of deity not in existence.*

The principle of Hindu Law which invalidates a gift other than to a sentient being capable of accepting it does not apply to a bequest to a trustee for the establishment of an image and worship of a Hindu deity after the testator's death, nor does it make such a bequest void. Further no distinction can be made between a bequest for religious purposes and a gift *inter vivos* for identical purposes. Nor is it necessary that the gift must be to trustees as distinct from Thakur not yet brought into being, as the interposition of trustee has nothing to do with the question. (*Khundkar, J.*) BHABATARINI DEBI *v.* ASHMANTARA DEBI A.I.R. 1938 Cal. 490.

——*Guardianship—Alienation by guardian—Validity of—Discharge of binding debts—No pressure on the estate.*

Where the guardian of a minor alienated some of his properties to discharge the debts binding on him but there was no pressure on the estate from the creditors the price paid was a fair one and the d [illegible]

Held, that the alienation is valid ar [illegible] minor (*Venkatasubba Rao and Abdu* [illegible]

[illegible] guardian *Status of—General recognition by family of minor—Power to give discharge of debt due to minor.*

A *de facto* guardian is one who is already a guardian owing to something which has happened previously. Where a person, who makes an alienation or receives a payment, is, at the time [illegible] common consent, in th[illegible] and those interested i[illegible] person who is entitled [illegible] that person so recognised has consented to act as guardian, that person is a *de facto* guardian and it is not necessary to wait for a series of transactions in the capacity of guardian in order to clothe that person with authority to represent the estate of the minor. 51 Bom 1040 and 55 M L J 861, Ref [illegible] guardian who is validly in char[illegible] affairs may, for the benefit of that [illegible] discharge in respect of a debt [illegible] A. I. R. 1937 Mad. 280, Diss. fr[illegible] *J.*) HANUMAYAMMA *v.* LAKSHM[illegible]

48 L.W. 506 = A.I.R. 1938 Mad 950 = (1938) 2 M L.J. 632.

——*Guardianship—Step-mother and aunt—Competition between—Choice.*

Where both the aunt and step-mother of a minor boy of 11 years claimed to be appointed as his guardian; it was held that the step-mother's interests were adverse [illegible]

Alienation
Ancestral Business

HINDU LAW—Joint Family.

Ancestral property.
Business
Capacity to join co-operative society.
Constitution.
Coparcener.
Decree against father.
Decree against member.
Joint property.
Manager
Presumption of Jointness.
Self acquisitions.
Suit for partition
Survivorship.
Alienation
Benefit.
Binding nature.
Father
Manager.
Member.
Setting aside.

——*Joint family—Alienation—Benefit of the estate—Test—Considerations.*

It is impossible to give a precise definition of the expression "benefit of the estate" applicable to all cases. Whether or not a particular transaction is beneficial will depend on the particular circumstances of each case. The purpose of a loan may be necessary; yet the debt [illegible] benefit of the family. (*Stone, C.J. and Niyogi, J.*) GANPATRAO *v.* ISHWAR SINGH. A.I.R. 1938 Nag. 482.

——*Joint family—Alienation—Binding nature—Difference between mortgage and sale.*

A mortgage and a sale transaction stand on a different footing. A sale is either wholly good or bad; a [illegible] ble of being sup[illegible] pear that part of [illegible] part would be [illegible] GANPAT RAO *v.* ISHWAR SINGH. A.I.R. 1938 Nag 475.

——*Joint family—Alienation—Duty of lender—Proof of necessity—Coparceners not contesting suit—If entitles lender to decree.*

Where a manager of a joint Hindu family borrows [illegible]s to make [illegible] sive of the [illegible] before he [illegible] and that [illegible] may not [illegible] ntitle the [illegible] facts mentioned above. The Court has to be satisfied about these before a decree is passed. (*Misra, J.*) RAM KRISHNA DAS *v.* NIMAI BHAR. 1938 A.L.J. 1049 = 1938 A.W.R. (H.C.) 760.

——*Joint family—Alienation—Father—Mortgage to purchase lands—Mortgagee knowing purpose of mortgage—Mortgage, distinct transaction from sale—Antecedent debt—Mortgage, if binding on the sons of mortgagor.*

A father of a joint Hindu family purchased property *A* and as he had not sufficient money to pay for the whole of the consideration, he mortgaged certain other family property *B* along with the newly purchased property *A*, to raise money for the sale. The vendor had nothing to do with the mortgage and the mortgagee ha

HINDU LAW—Joint Family.

nothing to do with the sale, except that he knew that the purpose of the money advanced by him, was to pay off the vendor of *A*,

Held, that the mortgage and sale do not am

'IARI-

——*Joint family—Alienation — Manager—Fac be shown by lender—Necessary purpose and nece for loan*,

For an alienation by manager to be valid, what to be shown is that the loan is for legal necessity, that the money is wanted, or is stated to be wanted, and enquiries confirm that want for a necessary purpose The difference is important. Where the manager has, to the knowledge of the lender, large available resources, and actual cash at hand, he cannot bind the estate if he borrows ostensibly to pay land revenue. The purpose is necessity, but there is no necessity for the loan, where there are apparently large resources, a large income and an unencumbered estate. The lender must show a necessary purpose but a necessity for the

inter se—*No communication to alienee ratification.*

A manager of a joint Hindu family way of mortgage which was not for family. In a subsequent agreement am this debt was admitted by them but the not communicated to the mortgagee.

Held, that the agreement did not amount to ratification of the mortgage debt by the other brothers. There could be no ratification of a contract unless it is communicated to the other side or that subsequent actions show an approbation of the contract. (*Stone, C.J. and Niyogi, J.*) GANPATRAO *v.* ISHWAR SINGH.

A.I.R. 1938 Nag 482.

——*Joint family—Alienation—Manager— Ratification after majority—Requirements.*

during their minority by a managing member of a joint Hindu family there must be communication to the alienee by the ratifiers before the act becomes irrevocable. (*Stone, C.J. and Niyogi, J.*) GANPAT RAO *v.* ISHWAR SINGH. A.I.R. 1938 Nag 476.

——*Joint family—Alienation by member—Right of alienee—Suit for partial partition.*

A purchaser of a small portion of the joint family property from one of only of the land purc decree his suit if the prejudiced or inconve *J.*) TARINI CHAR LAL DAY.

HINDU LAW—Joint Family.

——*Joint family—Alienation—Setting aside—Long lapse of time—Value of recitals in conveyance—Pre*

over 40 of neces- except the recital in the conveyance,

(1938) 1 M.L.J. 157.

——*Joint family—Ancestral property—Joint family property—Coparcener getting title by adverse possession by excluding other co parceners—If self-acquisition of that coparcener—Sons of such person—If acquires right by birth.*

Joint family property to which a coparcener obtains title by adverse possession by excluding his other coparceners does not thereby become his self-acquisition in

cestral property and the ght of coparceners in it *JJ.*) SURESHCHAN-

I.L.C. 820 = 10 R B. 493 =

Manager.
Member carrying on business.
Nature of.
New business.
New venture.
Partnership.
Pronote by karta.

——*Joint family—Business—Agricultural operations—If trade.*

A I R 1938 Nag 65.

——*Joint family—Business— Ancestral business—What is—Sons born after starting of business—Liability.*

A business started by a manager of a joint Hindu family cannot be regarded as ancestral. The fact that certain minor members were not born at the time when the business was started, was held not to make any

HINDU LAW—Joint Family.

——*Joint family—Business—Business carried on by heirs of original owner along with other dependent members of family—If joint family business*

A Hindu joint family, even one coming under the Bengal school, consists of a wider gro... parceners, *i.e.*, sharers. The wives of ... the unmarried daughters, the sons and ... Dayabhaga family when the father o... living, and the other members who have a claim on the family funds for maintenance would, accordingly, be regarded as members of the joint family. ... mess, the common worship, the commo... complied with ties of blood and introducti... family by marriage and adoption, make the...

——*Joint family—Business—Debts—Debts contracted by manager—Extent of liability of other members.*

Where debts are contracted by manager of a joint Hindu family, the other coparceners are liable not personally but only to the extent of their interest in the family property unless, in the case of adult coparceners, the contract sued upon, though purporting to have been entered into by the manager alone is in reality one to which they are actual contracting parties, or one to which they can be treated as being contracting parties by reason of their conduct, or which they have subsequently ratified. The fact that a coparcener ...

Personal liability ...

... incurred by the manager. It is not uncommon for ... n the ... not ... the ...

... family debts borrowed by the manager. ... may arise, so far as participation in trade is ...

HINDU LAW—Joint Family.

by reason of the applicability of the principle of "holding out", but except to the extent resulting from that doctrine, it cannot be held that no junior member of a ... to take any interest in ... In the absence of proof ... participation as would ... hat of coparceners in ... 'ners' in the business, the junior members cannot be made personally liable for debts incurred by the manager. (*Varadachariar* ...

... of a trading ... the business ... dow to main... mstances as to ... having notice ... the condition ... een genuinely ... usiness of the ... tainted with ... *ad, J*) MT. ... 7 I C. 1005 = ... 938 Pesh 68.

... *r admitting* ... *and liability*

... ily admits a ... e other mem... business till ... s and to be ... *garwala and* ... RY *v* TARA ... R. 519 (2) = 10 R.P. 570 = 1938 P.W.N. 547 = 19 Pat.L T. 541 = A I R. 1938 Pat. 377.

——Joint family—Business—Manager—Representative capacity of—Promissory note in favour of—Suit on—Right of manager and of individual members. *See* MYSORE C. P. CODE REGULATION, O 30.

42 Mys H C.R 597.

——*Joint family—Business—Member carrying on business—Presumption.*

There is no presumption that a business carried on by a member of a joint family is joint family business. A member of a joint family who engages in trade can ...

... *-Business—Nature of—Family* ... *and ordinary partnership—Dis-*

... y trade is a species of ancestral ... every member of a Mitakshara ... y birth an interest in the same ... of property. They become not only coparceners but also co-partners of the trading firm. A joint family trading partnership appears to differ from ordinary partnership in two respects, namely, (*i*) it is not dissolved by the death of any member, and (*ii*) a ...

HINDU LAW—Joint Family.

nothing to do with the sale, except that he knew that the purpose of the money advanced by him, was to pay off the vendor of *A*,

Held, that the mortgage and sale do not amount to one transaction, the mortgage money was raised to ... nding ... 'FARI- ... 465.

——*Joint family—Alienation — Manager—Facts to be shown by lender—Necessary purpose and necessity for loan.*

For an alienation by manager to be valid, what has to be shown is that the loan is for legal necessity, not that the money is wanted, or is stated to be wanted, and enquiries confirm that want for a necessary purpose The difference is important. Where the manager has, to the knowledge of the lender, large available resources, and actual cash at hand, he cannot bind the estate if he borrows ostensibly to pay land revenue. The purpose is necessity, but there is no necessity for the loan, where there are apparently large resources, a large income ... encumbered estate The lender must show a necessary purpose but a necessity for the after reasonable enquiries, he, as a reasonab satisfied of that necessity, that is sufficient ; ...

——*Joint family — Alienation — ... benefit to estate—Admission of debt ... inter se—No communication to alienee ratification.*

A manager of a joint Hindu family ... way of mortgage which was not for ... family. In a subsequent agreement among the brothers this debt was admitted by them but the agreement was not communicated to the mortgagee.

Held, that the agreement did not amount to ratification of the mortgage debt by the other brothers There could be no ratification of a contract unless it is communicated to the other side or that subsequent actions show an approbation of the contract. (*Stone, C.J. and Niyogi, J.*) GANPATRAO *v.* ISHWAR SINGH.
A.I.R. 1938 Nag 482.

——*Joint family—Alienation—Manager— Ratification after majority—Requirements.*

...

during their minority by a managing member of a joint Hindu family there must be communication to the alienee by the ratifiers before the act becomes irrevocable. (*Stone, C.J. and Niyogi, J.*) GANPAT RAO *v* ISHWAR SINGH. A.I.R. 1938 Nag. 476.

——*Joint family—Alienation by member—Right of alienee—Suit for partial partition.*

A purchaser of a small portion of the joint family property from one of the co-owners can sue for partition only of the land purchased by him, and the Court can decree his suit if the parties would not be in any way prejudiced or inconvenienced thereby. (*Syed Nasim Ali, J.*) TARINI CHARAN CHAKERBUTTY *v.* DEBENDRA LAL DAY. 68 C.L.J. 114.

HINDU LAW—Joint Family.

——*Joint family—Alienation—Setting aside—Long lapse of time—Value of recitals in conveyance—Presumption to fill in details—Permissibility.*

Where an alienation made by a step-mother over 40 years ago is questioned on the ground of want of necessity and where there is no evidence at all except the recital in the conveyance,

Held, that in such a case, recitals could be taken into consideration and further it was open to the Court to make presumptions to fill in details which have been obliterated by time. (*Leach, C.J. and Venkataramana Rao, J.*) VENKAYAMMA *v* SITARAMARAJU.
173 I.C. 951 = 10 R.M. 664 = 1938 M.W.N. 1126 = 48 L.W. 800 = (1938) 1 M.L.J. 157.

——*Joint family—Ancestral property—Joint family property—Coparcener getting title by adverse possession by excluding other coparceners—If self acquisition of that coparcener—Sons of such person—If acquires right by birth.*

Joint family property to which a coparcener obtains title by adverse possession by excluding his other coparceners does not thereby become his self acquisition in ...

——Business.

Agricultural operations.
Debts.
Manager.
Member carrying on business.
Nature of.
New business.
New venture.
Partnership
Pronote by karta.

——*Joint family—Business—Agricultural operations—If trade.*

...

A.I.R. 1938 Nag 65.

——*Joint family—Business—Ancestral business—What is—Sons born after starting of business—Liability.*

A business started by a manager of a joint Hindu family cannot be regarded as ancestral. The fact that certain minor members were not born at the time when the business was started, was held not to make any difference. It is only with regard to a debt incurred for an ancestral business that the minor members of a joint Hindu family or their shares in the joint family property are liable. (*Wort and Manohar Lal, JJ.*) GANPAT RAI MARWARI *v.* SUKHDEO RAM. 174 I.C. 218 = 10 R.P. 490 = 4 B.R. 404 = A.I.R. 1938 Pat. 335.

regarded as members of the joint family. mess, the common worship, the com complied with ties of blood and introdu

She not only continues to be a member of her father's family, but she introduces into that family others who, in normal

fined to the heirs of the person who started it, but includes his daughter who was a continuing member of his family, or his *ghar jamai* who by marriage was introduced into the family. It would satisfy every legitimate test of a joint family business, if the business is

——*Joint family—Business—Debts—Debts contracted by manager—Extent of liability of other members.*

Where debts are contracted by manager of a joint Hindu family, the other coparceners are liable not personally but only to the extent of their interest in the

Personal liability of.

It is unreasonable to insist that the adult members of a joint Hindu family should take no interest whatever in the family business on paying of becoming personally liable for all the transactions entered into by the managing member under the Hindu Law, their share in the family property is undoubtedly liable for the liabilities incurred by the manager. It is not uncommon for junior members in a family to take an active part in the supervision of the family property. But it does not follow that the participation by an adult member of the family in the business of collection of outstandings due to the family involves him in personal liability for family debts borrowed by the manager. A distinction may arise, so far as participation in trade is concerned,

principle of "hold- resulting from that junior member of a take any interest in the absence of proof ticipation as would of coparceners in rs" in the business,

concern, debts incurred in connexion with the business will take preference over the right of a widow to maintenance. No question arises in such circumstances as to creditor having notice course the condition have been genuinely le or business of the family and the transaction should not be tainted with fraud. (*Almond, J.C. and Mir Ahmad, J.*) MT. HOWANI BAI *v.* DEVI DIAL. 177 I C 1005= A.I. . 1938 Pesh. 68.

——*Joint family—Business—Manager admitting* ... *and liability*

ily admits a e other mem- business till s and to be *'arwala and* RY *v* TARA " R. 519 (2)= 10 R.P. 570=1938 P.W.N. 547=19 Pat.L T. 541= A.I.R. 1938 Pat. 377.

——Joint family—Business—Manager—Representative capacity of—Promissory note in favour of—Suit on—Right of manager and of individual members. *See* MYSORE C. P. CODE REGULATION, O 30.

A can efit, from ings his *JJ.)*

714.

——*Joint family—Business—Nature of—Family trading partnership and ordinary partnership—Distinction*

A joint Hindu family trade is a species of ancestral joint property in which every member of a Mitakshara joint family acquires by birth an interest in the same way as in other kinds of property. They become not only coparceners but also co partners of the trading firm A joint family trading partnership appears to differ from ordinary partnership in two respects, namely, (*i*) it is not dissolved by the death of any member, and (*ii*) a member of the family becomes a co-partner by operation of law. (*Costello, A C.J. and McNair, J.*) LALA BAIJ NATH PRASAD *v.* RAM GOPAL LACHMI NARAYAN. I.L.R. (1938) 1 Cal. 389.

HINDU LAW—Joint Family.

——*Joint family—Business—New business started by father—Debts incurred in—Liability of sons.*

When the business of a joint Hindu family to finance which money has been borrowed in a new business and not an ancestral business, the sons are not liable for the payment of the loan contracted by the father for that business, unless the transaction was for the benefit of the family or to the benefit of the estate or it was supported by legal necessity. If, for instance, ancestral property has ceased to be remunerative, and there is no way of maintaining the family except by alienating that property and investing the proceeds in some business, the alienation can be upheld as one for valid necessity (*Bhide and Beckett, JJ.*) PRABH DAYAL *v.* BASANT LAL. 40 P.L.R. 678 = A.I.R. 1938 Lah. 622.

——*Joint family—Business—New business started by father—Son participating in it—Money borrowed for business—Charge on family property.*

If a son after attaining majority participates in the business newly started by his father, he must be taken to have accepted it as a family business, and the money borrow...

charge

JJ.)

——

manager—Mortgage of family property to finance venture—If binding on all members—Tests.

The power of the manager of a joint Hindu family to enter into transactions for the support of the family and to start new ventures is to be judged (when in exercise of such power the family property is charged or alienated by the manager) by the consideration whether that

by the manager to finance the
members of the family whethe
the venture or not, provided
a prudent manager would und
were in fact required to finance ...
Varma, JJ.) CHHOTEY LAL CHAUDHURY *v.* DALIP ... 1938 P W N 846 =

——*Joint family—Business—P*
Suit by creditor against family—Pl
that he has separated and therefore
Burden of proof.

In a suit to recover from a Hindu joint family firm money borrowed under a promissory note executed by the karta the plaintiff who seeks to charge the joint

HINDU LAW—Joint Family.

——*Joint family—Capacity to become member of Co-operative Society.*

A Hindu joint family can be a member of a Co operative Society. (*Horwill, J.*) VILLUPURAM URBAN CO-OPERATIVE BANK *v.* BALASUBRAMANIA MUDALI 1938 M.W.N. 567 = 48 L.W. 285 = A.I.R. 1938 Mad. 809 = (1938) 2 M.L.J. 186.

——*Joint family—Constitution—Rights of members.*

Joint family consists of males and females who constitute a sort of corporation, some members of which are entitled to demand a share at a partition while others are only entitled to maintenance. Their rights spring from their being *gotraja sapinda*. A joint family may consist of surviving female members only. (*Stone, C.J. and Niyogi, J.*) MST. DRAUPADI *v.* VIKRAM. 1938 N.L.J. 237 = A.I.R. 1938 Nag. 423

——*Joint family—Coparcener—Death of—Others, if his representatives—Nature of rights of members.*

A member of a joint Hindu family is in no sense a representative of a deceased member. When one ... his share survives to the other members,

177 I.C. 610 = 4 B.R. 840 (1) ...

——*Joint family—Co-parcener decree against member—Decree if binding only upon defendant or upon joint family—Question of fact—Proper course—Withholding of costs for failure to do so.*

It is a question of fact to a large extent whether a ... member of joint Hindu
upon
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sonal
ding
mself

putes. The High Court is entitled to withhold costs from litigants who necessitate a number of actions instead of ... the parties as to whether the
mily is being
ly were not
were not in a
e to be con-
l be taken in

——*Joint family—Co parcener—Decree against—Execution sale—½th share of property sold when coparcener's share was only ⅓th—Title of purchaser.*

... money decree against a co-

Singh, J.) NANAK CHAND *v.* GANDU RAM.
177 I.C. 746—11 P L

——*Joint family—Co*
coparcener after date of
tion to joint property.

If the income received
of disruption relates to a
would be treated as an ac
joint family property and
for it. A I.R. 1916 Cal. 500, rel on. (*Addison and Din Mohammad, JJ.*) SHANKAR DAS *v.* OFFICIAL RECEIVER A I R. 1938 Lah. 328.

——*Joint family—Co-parcener party to litigation—Death during pendency—His son added—Compromise decree—Disappearance of that son—His eldest son, if can execute compromise decree.*

Where a member of joint Hindu family died during the pendency of a litigation to which he was a party, his son was brought on record in his place and a compromise decree is passed, and a portion due was realised and where after the son so added disappeared, his eldest son as the manager of the family is entitled to apply for the execution of the decree for the balance due. (*Bennet,*

The coparceners have a right to enjoy and hold the joint property, to restrain the acts
pect of it, to burden it with th
pleasure to enforce its partition
independent power in the disp
(*Stone, C J and Niyogi, J.*) MST. DRAUPADI *v.* VIKRAM 1938 N L J 237=A.I R. 1938 Nag 423

——*Joint family—Coparcener—Right to renounce interest in part of joint family property.*

There is no authority that a coparcener can renounce his interest in part of the joint family property in favour of one or all other co-parceners. (*Addison and Din Mohammad, JJ*) MT. TULSI BAI *v.* HAJI BAKHSH. 177 I C 422 (2)=11 R.L 318=40 P L R 738=A I R 1938 Lah. 478

——Joint family—
manager—Partition—F
manager after partition

raises no objection whatever, the son who was not a

CENTRAL BANK, MALKAPUR
I L R 1938 Nag 604=178 I C 293=1938 N L J 82=A I R 1938 Nag 434

——*Joint family—Father—Decree against—Execution against sons as legal representatives.*

A coparcener leaves no estate in the coparcenary property on his death, and under the Hindu Law, a surviving coparcener, even though a son, does not get his

property by succession as his heir. A coparcener does
parcener
or does
t if the
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l father
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DATT
v SADA NAND LALL. 174 I.C. 307=1938 A L R. 264=10 R A. 560=1938 A L J. 66=1938 A.W R 58 (H C)=A.I R 1938 All. 163

——Joint family—Father—Insolvency of—Shares of sons—Receiver's power to seize—Pious obligation. *See* PROVINCIAL INSOLVENCY ACT, S. 28 (2) AND (3).
18 Pat L T. 839.

——Joint family—Father—Representative capacity—Decree against father—If *res judicata* against sons—Assent of sons to representation by father—If to be express. *See* OATHS ACT, SS. 8 AND 11.
40 Bom L.R. 1005.

——*Joint family—Joint property—Brothers acquiring property by joint exertions—Absence of ancestral nu-*
ommon or joint tenants.

inherited any ancestral
it joint personal exer-
intention whether they
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strangers entering into a partnership, or as members of
th the legal qualities
erty, chief among
CHANDRABHAGA
173 I.C. 85=10 R N. 274=A.I R 1938 Nag 142.

——*Joint family—Joint property—Grant of sheri lands to member of family—Patta mentioning grantee individually—If joint property or separate property of grantee—Absence of allegation of payment of consideration from family or of throwing into common stock—Subsequent enlargement of interest by grant of full occupancy rights to heirs of grantee—Right of family to claim benefit of Trusts Act, S. 90, Ill* (b).

It is well established that there is nothing to prevent a

though initially the grant was the separate property of
of joint family
the other co-

granted to the member for himself and not as representing the family or for the benefit of the family, the family cannot claim the property as belonging to it. If the heirs of the grantee subsequently enlarge the nature of the tenure by reason of a resolution of the Government transferring the lands on full occupancy tenure, the heirs so getting full occupancy tenure cannot be treated as holding the property in a fiduciary capacity

and for the benefit of the family, within the meaning of S. 90 of the Trusts Act, read with Ill. (b) to that section (*Rangnekar, J.*) DATTATRAYA SITARAM v. SHANKAR.
40 Bom L R. 118=175 I.C. 434=10 R.B. 569= A.I.R. 1938 Bom. 250

——*Joint family—Joint or separate property—Property acquired by coparcener out of his separate income.*

A member of a joint Hindu family can acquire property for himself out of his own separate income, and it is his own separate property unless it is proved that such member has blended his income with that of

the joint family did not sign the agreement, nor the fact

1938 A.L.R. 615=A.I.R. 1938 All 414.

——*Joint family—Manager—Loan by firm out of funds of family—Suit in our name for recovery—Maintainability in the absence of statement that suit is on behalf of family—Contract Act, S. 230.*

——*Joint family—Manager—Position of—Liability to account.*

from the Tahsildar

tion is that all property held by any member is held as a member of the family and not as an individual. (*Stone, C.J.*) SHER MOHAMAD KHAN v. RAMRATAN GANESHIRAM TELI. I.L.R. 1938 Nag 233= 173 I C. 572=10 R N. 309=A.I.R. 1938 Nag 87.

——*Joint family—Presumption—Punjab.*

There is an initial presumption that a Hindu family is joint in estate and that where a joint Hindu family owns ancestral property which has not been partitioned, the presumption is that all the property possessed by the members is joint. In Punjab however the fact that the ... and is not inconsistent ... is usual to find Hindu ... taken place without ... have separated with- ... deed. The sons go ... one or two perhaps ... thers start new trades ... ervice, yet there is no partition, no drawing up of deeds of any kind, a certain

——Joint family—Promissory note by manager—Indorsement—Right of indorsee to proceed against other coparceners not parties to the note. *See*, NEGOTIABLE INSTRUMENTS ACT. SS. 27, 28 AND 32.
1938 M.W.N. 238=47 L W. 309= (1938) 1 M.L.J. 378 (F.B.).

... the burden shifts on to ... o show how he ... his own out of ... hat nucleus has ... have been the ... tion, or where ... ployed in other ways, then the fair inference will be that the acquisition is acquired apart from it, *i.e.*, as self-acquired. This does not mean that the nucleus must be of such a kind ... to so much property or money that it can ... turned into the property in question. If the ... shown to be a businessman deriving his

(*Stone, C.J.*) SHER MOHAMAD KHAN v. RAMRATAN ... 233= ... g. 87.

into ... *ice of*

. 60 a

HINDU LAW—Joint Family.

the ancestral funds went towards the purchase of those properties. On a contention by the son that the properties so acquired were joint family properties inasmuch as they were acquired with the nucleus of the ancestral funds.

Held, that the mere proof by the s… had a nucleus of ancestral property … shift the burden on to the other side … subsequently acquired properties were … private earnings. To shift the burden it would have to be further proved that the ancestral property was such, that by its means, the subsequently acquired properties might have been purchased.

Held, further, that the p…

——*Joint family—Suit for … —Effect of filing of writter … Liability to account—Principl…*

Where a written statement … and possession contains an e… to separate, it may be taken … same manner as a plaint in … the written statement may … among the members *inter* … constitute the parties to the … division in status of member… stated. In the absence of … conduct the only account the … family is liable to render is … the property divisible and th… Court must be in the manner … discovery of what the family property in fact consists of. *Mayne's Hindu Law*, 9th Edition, page 470, Rel. on. (*Venkatasubba Rao and Venkataramana Rao, JJ.*) SWAMINATHA ODAYAR v GOPALASWAMI ODAYAR.

1938 M W.N. 1214=(1938) 2 M.L.J. 704

——*Joint family—Survivorship—Widow and unmarried daughters of deceased co-parceners—Right to maintenance and marriage expenses from property in hands of surviving co parcener—Nature of—Right to* …

… surviving co parceners. The latter taking by survivorship takes it su… widow and unma… marriage expens… right to mainte… merely personal … the property tak… right is an inte… defeated by an a… under S 88, C… parcener who ab… always entitled t… create a formal … be attached o… S. 88, Cr. P. Co… the absconder's … (*Divatia, J.*) …

11 R B. 41=40 Bom L R 422= A.I.R. 1938 Bom. 321.

——*Limited owner—Position of—Daughter realising*

HINDU LAW—Maintenance.

decree for arrears of profits—Restitution—Estate, if liable for.

It is true that a widow or other limited heir is not a tenant-for-life but is owner of the property held by her subject to certain restrictions on alienation and subject …

… sioners and she has absolute power of disposal of the income of the property inherited by her. She is not bound to save any portion of the income and she can …

… *Held*, that her claim for profits was a personal claim …

… capacity and she had to refund it in her personal capacity. (*Thom, C.J., Bajpai and Mohammad Ismail, JJ.*)

A I R 1938 All 426 (F.B.)

——*Maintenance — Daughter in law — Right of as against father in-law's self acquired property—Suit … absence of ancestral property … pending suit—Effect—Decree … tate as against legal represen-*…

There is no authority for holding that whenever a minor daughter in law is widowed she has a right to …

——*Maintenance—Persons entitled to—Daughter-in-law—Right of against self acquired property of father-in law in the hands of donee or devisee by will.*

HINDU LAW—Maintenance.

A widowed daughter in law under the Hindu law has no legal right to maintenance from her father-in law out of his self acquired property but only what is called a moral right, but if on her father-in law's death that property descends by inheritance to his heirs, her moral right becomes a legal right at the moment of his death as against them and as against the property which they have so inherited She has no such legal right against a devisee or donee of the self acquired property of her father-in law or against the property itself if it descends not by inheritan
Stodart, JJ.)

——*Maintenance—Persons entitled to—Illegitimate son of Hindu coparcener of Jain sect—Right to maintenance from father's share of joint family property—Amount of maintenance—If limited to bare necessities of life*

Under the Mitakshara school of Hindu Law an illegitimate son of a deceased joint coparcener (who is a member of the twice-born or regenerate classes), who has died in union and without leaving any separate property is entitled to receive maintenance out of the joint family estate which has passed by survivorship to his putative father's coparceners. It is not necessary that the mother of the illegitimate son should have been a दासी or continuously kept concubine of his father. There is no justification for holding that the maintenance awarded should cover only the bare necessities of life. The expression जीवन् मात्र, in Ch. I, S 12 verse 3 of the Mitakshara has no reference to the amount of maintenance. It must be taken to mean no more than that the illegitimate son gets maintenance merely as distinguished from a share. *(Broomfield and Macklin, JJ.)* HIRALAL v. MAGHRAJ. 178 I.C 311=40 Bom L.R. 937=A I R 1938 Bom 433

arrears—Power of Court to grant.

The right to maintenance under the Hindu Law does not depend on contract, but is a peculiar right, and the rate of maintenance though fixed by agreement of parties or by a decree of Court may be varied or altered

for life" at a particular rate cannot be held to be a release of the right of any party to claim an alteration of the rate on the ground of a chang
Where the rate has been fixed by ar
by a decree of Court, it is not
should be a suit by the party claimi
the purpose; the party bound to pay maintenance can get the rate altered in suit by the other party for maintenance. When the rate has been fixed by a decree, the proper procedure to get the
of a suit, unless the decree itsel
cation of its terms, in which ca
for that purpose in execution.
the rate can be granted not merely from the date on which the plea is raised, but in respect of arrears of maintenance as well. *(Abdul Ghani and Singaravelu Mudaliar, JJ.)* NANJAMMA v. VISWANATHIAH. 16 Mys L J. 63=42 Mys H C.R. 699.

——*Maintenance—Widow—Amount—Determination—Facts to be taken into account—Family debts—Arrears—Rate—Discretion—Interest on arrears—Practice.*

In arriving at the figures of maintenance to be allowed to a Hindu widow, the Court should take into account the debts with which the family is burdened. Where the

share and separates from the family but the rest of the family remains joint, the widow is entitled to maintenance from the whole of joint family and not merely from the income of the property allocated to her adopted son as the share of his adoptive father at the time of the determination of the share of the brother who has separated. The widow is, under the circumstances of the case, entitled to be treated generously in the matter of maintenance The arrears of maintenance to be awarded to the widow need not necessarily be at the same rate at which the Court has fixed the future maintenance and may be at a lesser rate. The Court has discretion in the matter. As regards the interest to be awarded on the arrears of maintenance, the Court should follow the usual course in such matters and should allow the Court rate of interest from the date of decree *(Stone, C. J. and Niyogi, J)* SHRIDHAR BHAGWANJI v. SITABAI. I L R 1938 Nag 289=177 I C 739=11 R N. 168=A I R. 1938 Nag. 198.

——*Maintenance—Widow—Charge—Extent of properties to be charged.*

It is unreasonable to give a Hindu widow a charge over the whole of the joint family properties for her maintenance The charge should be limited to the pro-
inten-
MMA.
618=
822.

——*Maintenance—Widow—Claim for enhancement—Arrears at enhanced rate—Date from which enhanced rate to be awarded.*

In a suit by a Hindu widow for enhancement of the

——Maintenance—Widow—Decree declaring right to-

——*Maintenance—Widow—Income from her personal exertions—If constitutes means.*

After a decree has been passed in favour of a widow for maintenance, the amount so decreed cannot be
widow happens to make her own living
xertions, because her income by personal
nnot be taken as her 'means'. *(Addison and Din Mohammad, JJ)* JAI RAM v. MT. SHIV DEVI. I.L R 1938 Lah. 352=177 I C 639=11 R L. 334=A I R. 1938 Lah. 314.

HINDU LAW—Maintenance.

——*Maintenance—Widow—Joint family—Liability if can be against individual members.*

Where in a suit for maintenance by a widow, the family has been found to be joint at all material times, both costs and maintenance are payable from joint family and not by any individual member. (*Stone, C.J. and Niyogi, J.*) SHRIDHAR BHAGWANJI *v.* SITABAI. I.L.R 1938 Nag. 289 = 177 I.C. 739 = 11 R N. 168 = A.I.R 1938 Nag. 198.

——*Maintenance—Widow—Rate awardabl*

for enhancement of rate—Considerations for deciding.

The maximum amount of maintenance of widow would be the amount of the income of

to which her deceased husband would have been entitled had been alive and a coparcener at the date of the suit. In a suit for enhancement of maintenance by a widow who already holds a decree in her favour for maintenance at a certain rate, the Court cannot proceed to fix the maximum without any regard to the judicial decision already passed and binding on both parties. The only grounds upon which that decision can be said to lose its force are such changes in the circumstances governing the widow and the family as were not foreseen and allowed for at the time when the prior decree was passed.

any reasonable changes in th

in the conventional necessities

improvement in the circum

which she belongs. The Court must also have regard to

——*Maintenance—Widow—Rate of maintenance—Test to determine—Law in Mysore—Mysore Hindu Women's Rights Act—Effect of.*

In determining the rate or quantum of maintenance to be awarded to the widow of a deceased co parcener in a Hindu joint family, the provisions of the Hindu Women's Rights Act provide a useful guide in regard to maintenance even in cases to which the Act does not apply. The Act indicates what should ordinarily be regarded as the upward limit, *viz.*, the income of what would have been half her husband's share, if he had been alive and had claimed partition (*Reilly, C.J and Abdul Ghani, J.*) NARASAMMA *v* AKKAYYAMMA 16 Mys L J. 406

——*Maintenance — Widow—Right against co-parceners—Decree for maintenance payable out of joint family—Subsequent partition — Effect — Liability of separated members.*

The surviving members of Hindu joint family are bound to maintain the widow of their deceased co-parcener out of the joint family funds and if a partition is effected after the death of the widow's husband without any special provision being made for her maintenance,

family, unless that decree is modified or some arrange-

HINDU LAW—Marriage.

ment is made by contract or otherwise, providing for her maintenance and validly superseding the terms of the decree. (*Reilly, C.J. and Abdul Ghani, J.*) NARASAMMA *v.* AKKAYAMMA. 16 Mys L J. 406.

——*Maintenance—Widow—Right of—Will by husband—Liability of donee.*

The right to maintenance possessed by a Hindu widow cannot be taken away by any disposition made by her husband and a donee under a will is bound to provide

ed absolutely to widow and the rest to the mother—Widow retaining the property—If precluded from claiming maintenance—Rate of maintenance—Determination of.

Where a person bequeathed a portion of his property to his wife absolutely and the remainder to his mother and there was no indication in the will that the gift to the wife was made in lieu of maintenance, the question arose after his death about the widow's right to maintenance. It was found that the income she would derive from the property bequeathed to her under the

in the

main

taken

47 L W 146 = A I R 1938 Mad 340 =

In a suit by a Hindu widow for enhancement of the rate of maintenance awarded to her in a prior suit, there is no justification for granting to the widow a lump sum of money to pay a pilgrimage for the benefit of the soul of her deceased husband, when it is not apparent that any such expenditure was refused at the time of the prior suit on grounds of lack of funds. Nor is there any justification for allowing her a lump sum for the replacement of utensils which have worn out in the interval between the prior suit and the later suit for enhancement. (*Wadsworth, J.*) VEERAYYA *v.* CHELLAMMA. 1938 M.W.N. 1072 = 48 L W 618 = (1938) 2 M L.J. 622.

——**Marriage**

Asura form

Ceremonies.

Contract of betrothal by father of minor.

Gandharva

Presumption as to form.

——Marriage — Asura form—Essentials *See* MARRIAGE—PRESUMPTION AS TO FORM. 1938 M.W.N. 161.

——*Marriage— Ceremonies—Saptapadi—Bride and*

red fire seven times—

formance of saptapadi

is that the bride and

steps. Where therefore

round the sacred fire

seven times,

can be given thereafter. (*Vivian Bose and Puranik, JJ.*) NARAYAN *v.* CO-OPERATIVE CENTRAL BANK, MALKAPUR. I.L.R. 1938 Nag 604=1938 N.L.J. 82=178 I.C. 293=A.I.R. 1938 Nag. 434.

——Partition — Partial partition — Rule against—Application of—Suit by alienee from one member of share in one item of property—Suit by—Frame of—Pleas open to other co-parceners. *See* ... S. 11

——*Partition—Presumption as to Allegation of property having been exc... as common—Burden of proof.*

According to the Hindu Law, a partition once effected is presumed to be complete. If a partition is proved to have taken place, the burden of proof lies on that party who alleges that certain family property was left as common property and excluded at that partition. If that party succeeds in proving that there was only a partial partition, that is sufficient in itself to establish ...

Once a partition is admitted or proved, the presumption of law is that it is a complete partition, and the burden is on the party who says that the partition was partial to prove it. (*Rangnekar, J.*) DATTATRAYA SITARAM *v.* SHANKAR 175 I.C. 434=10 R.B. 569=40 Bom L.R ...

——*Partition — Proo... rights.*

Under the Mitakshara ... tition of the joint estate c...

...*division if necessary*

division of the property is not necessary. Once the shares are defined, there is a severance of the joint status and thenceforth ... (*Sir Shadi Lal* ... SINGH. 40 Bom.L.R ...

1938 O.W.N. 727=19 Pat. L.T. 591=1938 A.L.R. 519=1938 A.L.J. 763=4 B.R. 688=1938 O.A. 646=175 I.C. 332=A.I.R. 1938 P.C. 189=(1938) 2 M.L.J. 234 (P.C.).

——*Partition—Self-acquired property—Registration—Necessity.*

Shares in buildings and business which are the self-acquired property of a member of a joint Hindu family ... other members of the ... trument. (*Collister and* ... *v.* COMMISSIONER OF ... I.L.R. 1938 All 638=... 525=11 R.A. 186=177 I.C. 260=...

——*Partition — Separation of one coparcener—Status of others—Presumption as to—If any—Question as to—Test to decide.*

While there can be no doubt that the presumption of union under the Hindu Law cannot continue after the ... family, it does ... coparcener the ... There is no ... e coparcener ... disposed may ... joint owners in ... separation of the share of the outgoing member. The intention to remain united can be inferred from their conduct even without any express agreement to that effect. The mere fact that the shares of the coparceners have been ascertained does not by itself necessarily lead to the inference that the whole family has separated. There is ...

... was ... after one or more ...

decree is passed by consent declaring, *inter alia* that the sons of the father by the first wife are to have a ...

an end to the joint status of the family. (*Leach, C. J. and Madhavan Nair, J.*) CHOCKALINGAM CHETTIAR v. MUTHUKARUPPAN CHETTIAR. 48 L W. 185 = 1938 M W.N. 810 = A I R 1938 Mad 849 = (1938) 2 M L J. 756

——*Partition—Separation—Presumption as to—Separate entries in Khewats in favour of different members—If indication of separation*

The fact that there are separate Khewats in the names of different members of a Hindu family cannot raise a presumption that the members of the family are not joint but separate. Such entries and registers cannot be taken to be separation among the members (*D*[illegible] RAM PANDEY v. SHYAM DEO NARA[illegible] 1

——*Partition—Severance of stat*[illegible] *suit—Effect of.*

It is clear law that the institution o[illegible] tion by a member of the joint family intimation of his intention to separate and that there is consequently a severance of his joint status from the date when the suit is instituted. A decree may be necessary for working out the results of the severance and for allotting definite shares, but the status of the plaintiff as separate in estate is brought [illegible] tion of his right to separate whether consequential decree or not (*Costello, McNair, J.*) LALA BAIJ NATH PR[illegible] GOPAL LACHMI NARAYAN. I L R (1938) 1 Cal 369

——*Partition—Suit for—Coparcener kept out of possession and enjoyment for long time—Mesne profits—Interest on—Right to be awarded*

In an ordinary suit for partition of properties belonging to a joint Hindu family interest will not be awarded on the mesne profits awarded, though under special circumstances the Court may award interest on the mesne profits awarded. Where the [illegible] kept out of possession of his share [illegible] perties for a long period during [illegible] pending in the trial Court and in th[illegible] and the opposite parties have not onl[illegible] fits of the properties throughout but have placed every [illegible]

(1938) 1 M L J. 439

——*Religious* [illegible] *to existing debutter—If could only be accepted upon donor's terms.*

An endowment which is an accretion to an already [illegible]

A mahant has power (apart from any question of necessity) to create an interest in property appertaining to the math which will continue during his own life, or [illegible]

into secular properties with consensus of family members—Validity.

The theory of conversion of debutter properties to secular properties by consensus of the family members has no warrant in Hindu Law and is against Hindu [illegible])

——*Religious endowment—Creation of—Book entry by firm crediting certain sum to deity as charity—Money continued to be used in business as before—Trust or endowment—If created.*

A Chettiar firm credited in their books of account a certain sum of money to a particular deity by way of charity. That money was used by the firm in their business as before and interest was credited upon it at the [illegible]

Held, that there was no endowment of any property [illegible]

——*Religious endowment—Creation of—Essentials.*

According to the Hindu law as administered in British India, the formal religious ceremonies of sankalp and samarpan, though ordinarily performed among the orthodox Hindus, are not essential for the creation of a valid endowment for religious purposes. So long as there is a clear and unequivocal manifestation of intention to create a trust and there is a formal divesting of the ownership in the property on the part of the donor and [illegible]

public purposes, dedication thereof must be deemed to be complete. The evidence of divestiture may be contemporaneous and the subsequent acts [illegible]

unequivocal terms that the house in question was set aside for the purpose of being used as a resting place for

gentry of the place on that occasion and there made a dedication to the effect that the house had been set aside for the purposes mentioned above.

Held, that in the face of these
not be urged that the house was
dedication was bad in the eye of
its being indefinite and vague. H
son of the dedicator of a part of
residence and allowing the other portion to be used as a girls' school was counter to the wishes of the settlor and was thus a breach of trust. (*Addison, Ag. C.J. and Din Mohammad, J.*) JAI DAYAL *v.* DEWAN RAM.

40 P.L.R. 954 = A.I.R. 1938 Lah. 686.

——*Religious endowment—Dedication—Essentials—Construction of deed.*

In the case of a dedication to an idol which cannot itself physically hold lands, it is not
is usual to vest the lands in trustees.
that there should be any express wo
idol. No religious ceremony such as s
pan is necessary, and a clear unequivocal manifestation of intention to create a trust and vesting of the same in the donor or other as a trustee is enough to constitute the dedication. Where the deed ran " . . . . for the purpose of carrying on the works, etc., of the seva and puja of the said deities duly . . . . I dedicate to the said deities the properties mentioned in the schedule and make them debutter, and rights thereto vest in the deities from this day and from this day I become completely divested of rights to the said properties "

Held, that the deed amounted to a valid dedication. (*Khundkar, J.*) BHABATARINI DEBI *v.* ASHMANTARA DEBI. **A.I.R. 1938 Cal 490.**

from generation to generation have to be taken into account But even if the consensus of the whole family can convert an absolute debutter property into secular property, such consensus must be of all the members,

the worship of
ARINI DEBI *v.*
1938 Cal. 490

ion of office—
of trustee—No
eritable trustee-ship.

Where a testator by his will founded a religious trust

Held, that in appointing one of the sons to the office of trustee, though no provision was made for the succession after that son's death, the testator must be held to have prescribed a line of succession in that son and his heirs. The appointment amounted to a grant of a heritable trusteeship. (*Madhavan Nair and Stodart, JJ.*) RAMACHAR *v.* VENKATA ROW

47 L.W. 764 = 1938 M.W.N. 175 =
1 = (1938) 2 M.L.J. 623.

-Direction to accumulate

not illegal if it does not benefit the settlor or members of his family at the expense of the idol or if its object is not so unreasonable as to be opposed to public policy. Even if the direction for accumulation is hit by S. 17, T. P. Act that in itself would not render the dedication invalid (*Khundkar, J.*) BHABATARINI DEBI *v.* ASHMANTARA DEBI.

A.I.R. 1938 Cal. 490.

——Religious endowment—Mahant alienation by—Validity—Possession of Alienee—When adverse. *See* RELIGIOUS ENDOWMENT—ALIENATION BY MAHANT **A I R 1938 Pat. 143.**

——*Religious endowment—Mahant—Installation of*

ath of a Mahant, the
e fully aware of the
practice will be for
successor usually nominated by
seventeenth day after the death.
hen the Mahant resigns during his
uccessor on the gaddi, it is obvious
ould be made aware of the proposed
and should be given the opportu-
confirm the nominee.
intentions, this is
and the practice of
al intimation meets
confirmation by the
in the nature of an
; it is important to

——*Religious endowment—Mahant—Property acquired by—Nature of.*

HINDU LAW—Religious Endowment.

The fact that properties have descended from guru (religious preceptor) to chela (religious disciple) does not necessarily lead to the conclusion that a property, when acquired by a mahant, loses its secular character and partakes of religious c... When a person enters the Udasi order, he ... members of his natural fam... he nor his natural relative ... held by the other. There is however no reason for holding that an Udasi cannot acquire private property with his own money or by his own exertions. If he ...

1938 M W N 885=1938 A L J 799=
1938 O A 711=19 Pat L T 712=175 I C 459=
1938 A W.R. (P C.) 145=A I R 1938 P C 195=
(1938) 2 M L J. 228 (P C.

——*Religious endowment—Math—Succession Mahant and ownership of property—How regulated.*

Succession to the office of Mahant, and the ownership of the Math property limited by the period of tenure of ... stom of the part- ...

in accordance with such custom (*Lor* ...
SATNAM SINGH *v* BHAGWAN SINGH
48 L W. 70=1938 M W.N 748=1938 O A. 554=
1938 O.W N 655=1938 O L R. 330=
11 R P C 47=68 C L J 44=4 B R. 789=
40 Bom L R 912=1938 A L J 795=
1938 A L R. 659= 175 I.C 772=
1938 A W R (P C.) 148=
A I R. 1938 P C. 216=(1938) 2 M L J. 332 (P C).

——*Religious endowment—Shebait—Nomination as shebait valid—Provisions about devolution after his death invalid—Founder's right to make fresh nomination*

Where a person is nominated to the office of a shebait by a disposition which is perfectly valid so far as such an estate was concerned, there can be no question of reverter to the founder of the right of fresh nomination ...

——*Religious endowment—Shebait—Right to relinquish office in favour of successor by nomination.*

A shebait who has under the terms of the endowment a right to nominate his successor, can validly relinquish the shebaitship in favour of his nominee during his lifetime. (*S. K. Ghose and Patterson, JJ*) NIRMAL CHANDRA *v*. JYOTI PRASAD 177 I.C 898=
11 R C 292=68 C L J 230=
42 C W.N 1138=A I R. 1938 Cal 709

——*Religious endowment—Shebaitship—Succession—Rule as—Right of founder's heirs—Founder's daughter's son—Estate taken—If only a limited one or full ownership—Collaterals of founder—Claim as against heirs of daughter's son—Sustainability.*

HINDU LAW—Restitution of Conjugal Rights.

According to Hindu Law, when the worship of a *thakur* has been founded, the *shebaitship* is held to be vested in the heirs of the founder, in the absence of evidence that he has disposed of it. Otherwise, or there has been some usage, course of dealing, or some other ... mode of devolution. ... e makes a distinction ... ale heir becomes a full owner of the property inherited by him and transmit it on death to his own heirs, while a female heir (barring certain exceptions in Bombay) only takes as a limited ...

——*Religious endowment—Trust—Endowment for religious charities—Essentials of validity—Arrange-* ...

religious or charitable endowment is the intention to endow and the creation of a fund in fulfilment of that intention A trust can be validly constituted under the terms of a partition deed and when moneys are set apart ... that purpose, that is ... moneys (*Leach, C ... J*) NAGAPPA ... FIRM
1938 M.W N. 1017=48 L W. 577=
A.I R 1938 Mad 899.

——*Restitution of conjugal rights—Suit by wife—Defences open—Gross failure on part of wife to perform obligation imposed by sacrament of marriage—Effect of*

A claim for restitution of conjugal rights is of the nature of an equitable right Although, under Hindu Law, the husband may be bound to maintain his wife, it does not follow that she is entitled, as a matter of course, for an order from the Court for the restitution of conjugal rights That depends upon the facts of each case. Even something less than what might be called a matrimonial offence for the purpose of a divorce or judicial separation may be sufficient to prevent a plaintiff from obtaining an order for restitution of conjugal rights Where a Hindu wife is the plaintiff in such a suit, gross failure on her part to perform the obligation of the sacrament of marriage imposed on her for the benefit of the husband might, if properly proved, afford good ...

deserted her husband's house, rejected all attempts at reconciliation and had insulted and outraged his family house and that she has been moved to seek an order for restitution of conjugal rights, not because in truth she wants to live with her husband, but merely to restrain a second marriage which the husband is contemplating, there being desertion on the part of the wife and a gross failure to perform the duties imposed upon her as a Hindu wife, the Court is justified in refusing to pass an order for restitution of conjugal rights in her fav

HINDU LAW—Reversioner.

The mere fact that she has borne her husband a child is not, in itself, sufficient to outweigh her failure in other duties. The Court is even justified in refusing to pass an order in such a case on account of the unwifely conduct of the wife extending for a long period, even though the application may be made in good faith. (*Davis, J. C. and Weston, J.*) RUKIBAI *v.* PARTABRAI.

A I.R. 1938 Sind 233

——*Reversioner—Consent to alienation by widow—Heirs of reversioner, if bound.*

Where a reversioner consents to an alienation by a widow his heirs are bound by such ...
alienation is binding on the one it is ec...
the other. (*Weston, I.C.S.*) UMRAO ...
NATH 19...

——*Reversioner—Estoppel—Alienat...*
Consent of immediate reversioner—His son, if estopped.

Actual reversioners are not estopped from suing to ...

alienated by the widow to their father 23 C.W.N. 1023, followed. (*Lort Williams, J.*) MANMATHA NATH SETT *v* GOBINDA LAL. **68 C.L J. 173.**

——*Reversioners—Right of—Alienation by widow—Subsequent sale for arrears of revenue—Right of reversioners to set aside alienation and revenue sale.*

A widow sold property to *B* who was a *bona fide* purchaser on 15th January, 1927 Subsequently ...
property was in arrears in the payment of reven...
property was disposed of in revenue sale on 6th ...

Held, that t...
sale was for or...
the year duri...
Consequently ...
arrear.
Held, furth...

... of
... ners
... *JJ.*)

JOTI LAL SAH *v.* MT. RAMESWARI KUER.
176 I C. 129 = 4 B.R. 682 = 11 R P. 51 = A I R. 1938 Pat. 281.

——*Reversioners—Right of to challenge alienation by widow—Nature of—Cause of action—Omission of presumptive reversioners to sue within time limited—Effect on remote or after-born reversioners—Suit barred before 1929—Reversioners under Act II of 1929—Suit by—Maintainability.*

There is only one cause of action for the whole body ...

born, are precluded from suing altogether, the remedy of the presumptive reversioner having become time barred. Where, therefore, the remedy of the then reversioners has already become barred by time, persons who become reversioners subsequently by reason of the Hindu Law of Inheritance (Amendment) Act of 1929, cannot maintain a suit to declare the alienation void or not binding (*Agarwala, J.*) DEBAL MAHTON *v.* MOTI MAHTON. **19 Pat L T. 145 = A I.R. 1938 Pat. 510**

——*Reversioner—Right to sue—Right of remote reversioner.*

Where the nearest reversioners have precluded themselves in some way by their own act or conduct from challenging the alienation made by the widow, persons who are the next in the line of reversion after them can prosecute a declaratory suit. Of course, if the nearest ...

——Reversioner—Suit by nearest reversioners—Act II of 1929 altering succession and making plaintiffs ...
...f plaint and joinder
...sioners under Act—
...of amendment and
... PRACTICE—PLEAD...
1937 M.W.N. 1175.

——Reversioner—Suit to set aside widow's alienation —Death of widow—Suit if can be continued. *See* SPECIFIC RELIEF ACT, S. 42, PROVISO.
16 Mys L J. 167 = 43 Mys.H.C R. 181.

——*Reversioner—Widow obtaining decree of her title to estate—Subsequent decree against widow in suit for ...*

... of
... a

compromise with persons in possession of the property. The compromise and consent decree thereon were dec...

... of the reversionary heirs was ... decree against her in her suit for possession did not affect the reversioner's right to possession. (*Lort ...*

——*Stridhan—Succession—Property inherited from mother.*

Stridhan inherited by a daughter from her mother passes on the daughter's death to the next heir of the mother. (*Khundkar, J.*) SISIR KUMAR SAHA *v.* JOGNESWAR SAHA. **42 C W.N. 359.**

——**Succession**
Bandhu.
Co widows' survivorship.
Illegitimate son
Mitakshara law.
Obstructed heritage.
Step sister's son

——*Succession—Bandhu—Heritability—Test.*

A bandhu or a bhinna gotra sapinda in order to have heritable rights must not be beyond the fifth degree from the common ancestor. (*Bennet and Verma, JJ.*)

HINDU LAW—Succession.

of great grandfather of propositus.

Under Hindu Law a son's son's daughter's son of the

survivorship and equal beneficial enjoyment The right of survivorship may be relinquished by agreement between the widows. (*M C. Ghose, J.*) UCHMATAN *v.* RAJENDRA NATH SANYAL. 67 C L J. 115= A.I.R. 1938 Cal 689.

——*Succession—Illegitimate son—Position of—Right*

father's death he becomes a member of the coparcenary—a member with curtailed rights but nevertheless a ... property ... imate sons ... an claim a ... *C.J. and Bose* ... SAD-

——

Precedence amongst—Test to be applied—Religious efficacy—When to be resorted to—Maternal uncle and father's sister's son—Preference

propositus and father's sister's son, the former is entitled to succeed. (*Sir George Lowndes*) BALASUBRAMANYA

——*Succession—Obstructed heritage—Male issue acquirer—If get an interest by birth.*

The male issue of the acquirer do not obtain interest by birth in property which has descended obstructed heritage. (*Vivian Bose, J*) OFFICI RECEIVER, AMROATI *v.* SRIDHAR. 174 I C. 849 (2)=10 R N. 423= A.I.R. 1938 Nag. 7.

——*Succession—Step sister's son—Position of.*

The position of a step sister's (that is, half sister's) son is the same as that of a sister's son in the line of heirs When the half sister's son is regarded in the line of descent and not merely collaterally, there can be

HINDU LAW—Widow.

no doubt that he stands in exactly the same relationship ... grandfather as the full sister's son and that the ... ould inherit from the grandfather equally. The ... on to the uncle has to be traced eventually ... the grandfather, that is, the father of the propositus—and though the sons of a full sister may exclude those of a half sister as between themselves, there seems to be no reason in principle why such sons ... t of heirs altogether. 14 *C.J. and Bose, J.*) 10 R N 254= =A.I.R. 1938 Nag 97.

DU LAW—ALIENATION

- **Cowidows.**
- **Debts.**
- **Maintenance** *See also* HINDU—LAW MAINTENANCE.
- **Nature of estate.**
- **Position and powers.**
- **Powers**
- **Property acquired on Partition.**
- **Reversioners' right to sue.**
- **Right of residence.**
- **Suit on pronote against widow.**
- **Surrender.**

——*Widow—Alienation by—If void—Suit by reversioner to avoid—Liability of alienee for mesne profits.*

An alienation made by a Hindu widow being merely voidable and not void, the alienee cannot be made ... the reversioner until the ... (*Pollock, J.*) PARASHU ... 20 N L J. 278

... *by—Alienee in possession—Acquisitions by, out of income—If accretions to estate.*

It is impossible to extend the doctrine of accretion to

——*Widow—Alienation—Consent of presumptive reversioners—Actual reversioners, if bound.*

... it was ... re not ... ptive ... ptive ... a pre- ... occa- ... actual ... of the ... earest

——*Widow—Alienation—Consent of reversioner—Proof.*

When a 'stringent equity' arising out of an alleged consent of reversioners is sought to be enforced against them, such consent must be established by positive evidence, and should not be inferred from ambiguous acts. (*Weston*) UMRAO MAL *v.* GOPI N . 1938 A M

——*Widow—Alienation — Powers of—Portion of purchase money not applied for necessity—Conditional decree setting aside sale—Validity.*

In case of transfer by a Hindu widow, the transferee gets the property at least for the lifetime of the widow, even if there is no legal necessity justifying the transfer. If after the widow's death, the reversioner wants to avoid a sale made by her and the purchaser succeeds in proving legal necessity or benefit to the estate, the transfer is completely protected. There cannot be a case, where there is legal necessity or benefit to the estate and at the same time the alienation is set aside. When a particular transaction is justified by legal necessity, the mere fact that a portion of the purchase money was not applied for purposes of legal necessity would not entitle the Court to pass a decree setting aside the sale on condition that the reversioner pays to the purchaser the portion of the purchase-money actually spent for legal necessity (*Mukherjea, J.*) MEGHMALA *v.* SITAL PROSAD. 43 C.W.N. 48

——*Widow—Alienation—Right of third persons to challenge.*

In the case of a Hindu widow it is open to the reversioners to challenge the legality of an alienation made by her but this right is not one of which a third person can take advantage *A* advanced a sum of money to three brothers forming a joint Hindu family and jointly owning two properties, the advance being secured by mortgage of one of the properties. One of the brothers subsequently died intestate and childless, leaving behind a widow *A* instituted a suit on his mortgage. Before a preliminary decree was passed in the suit, the widow brought a suit for partition of the joint property and mortgaged her interest in the property, for the purpose of raising a loan, in favour of *B*. *A* obtained a final decree in his suit and purchased th[illegible] to him in execution thereof. A [illegible] passed in the suit for partition unc[illegible] was declared entitled to a third [illegible] perty. *B* then filed a suit on his mortgage and obtained a preliminary decree Later on, *A* alleging that the [illegible]

——*Widow—Alienation—Right to set aside—Reversioner party to and taking benefit under transaction—Right to repudiate*

Where a Hindu widow or other limited heir enters into a family agreement or compromise involving an alienation of the estate, the reversioner who has been a party to and has benefitted by the [illegible] cluded from questioning the aliet[illegible] repudiate it. A party to the alienat[illegible] it and is bound by his or her own [illegible] *Ghani and Singaravelu Mudaliar* [illegible] *v* SESHAMMA.

——*Widow—Alienation of usuf*[illegible] *belonging to the husband's estate—Validity.*

Where an usufructuary mortgage forms part of the estate of a Hindu husband, his widow has no right to transfer such mortgagee rights, without legal necessity. (*Bennet, A C.J., Collister and Mulla, JJ*) FATEH SINGH *v.* RAGHUBIR SAHAI

I.L.R. 1938 All. 904 = 178 I C 12 = 1938 A.L.R. 830 = 1938 A.W.R. (H.C) 579 = 1938 A.L.J. 881 = 1938 O.W N. 985 = A.I R. 1938 A. 577 (F B).

——*Widow—Alienation—Setting aside of—Alienation set aside for want of necessity—Refund of purchase-money—Purchaser's right to claim, on ground of benefit to estate.*

Where a sale made by a Hindu widow to liquidate her husband's debt is set aside on the ground that legal necessity is not proved as the widow had sufficient money in her hands, the purchaser cannot demand a refund of any portion of the purchase-money as against the reversioner on the ground of benefit to the estate, although the money secured by the purchase was actually paid in liquidation of debts due by her husband. (*Mukherjea, J.*) MEGHMALA *v.* SITAL PROSAD. 43 C.W.N. 48.

——Widow—Alienation by—Suit by reversioner—Death of widow. If suit can be continued. *See* SPECIFIC RELIEF ACT, S 42 PROVISO,

16 Mys L J. 167 = 43 Mys. H C.R 181.

——*Widow—Compromise by—Reversioners, if bound.*

Compromises in the nature of family arrangements which amount to *bona fide* settlements of disputes in respect of the estate, or compromises entered into by the widow *bona fide* for the benefit of the estate, may bind the reversioners even though they were not parties thereto. They are deemed to be alienations induced by necessity or as being in a parallel position thereto. Similarly a compromise of a claim made by the next reversioner in [illegible]

——*Widow—Co widows—Nature of estate held by—Powers of—Relinquishment by one of right of survivor*[illegible] *If prohibited—T. P. Regulation, S. 6* [illegible]

them may relinquish her right of survivorship in that portion of the estate which is held by the other or others. (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) KITTAMMA *v.* SESHAMMA. 16 Mys L.J 232 = 43 Mys H.C.R 43.

——*Widow—Debts—Legal necessity—Decree—Exe*[illegible]

contracted a simple loan. The decree in such a case

should be deemed to have been passed against her, not in her individual capacity but as representing the estate of her husband The test to see whether a simple money decree obtained against a widow is virtually a decree against the estate and is binding not only on the widow but on the reversioners also is whether the widow was sued as a representative of the est [illegible] owner or in her personal capacity. [illegible] widow acting as representative of [illegible] male owner contracts a debt whic [illegible] tion of a mortgage deed (which [illegible] simple money decree is passed against the widow in the same capacity, the decree can be executed by attachment and sale of the last male owner's property to the extent of such amount as had been borrowed for legal necessity. (*Niamatullah and Rachhpal Singh, JJ*) PARATH NATH v. RAMESHWAR PRATAP SAHI

177 I.C 373 = 1938 A L J 834 = 1938 A W R (H C) 610 = 1938 A L R 739 = A I.R 1 [illegible]

——*Widow—Debts—Money borrowed* [illegible] *note—Suit after widow's death against* [illegible] *Liability of reversioners*

In a suit based on a hand note, the persons liable on the hand note are only the parties to the note and the heirs of those parties Th [illegible] a last male owner cannot l [illegible] executed by the widow of [illegible] the persons who have su [illegible] maker of the hand note w [illegible] altogether. (*Courtney-Te* [illegible]) RAMSEWAK MISRA v. JA [illegible]

172 I.C 24 = 1937 P.W.N 835 = 10 R P. 329 = 18 Pat L T. 810 = A I R. 1937 Pat 667

——*Widow—Maintenance—Right—Ways of satisfying—Remedy of widow*

[illegible] property are no higher than those given by [illegible] Act A portion of the property might be assigned to her in lieu of maintenance, in which she can only look to the profits and not to the property. But she can alienate it for her life time, but cannot thereafter claim to be maintained out of the property Where a decree creates a charge in her favour, she can get a receiver appointed in execution though there is no provision in the decree itself If she brings the property to sale in execution of her decree for maintenance, the charge on the property disappears after the sale and hence the purchaser cannot be made to pay her [illegible] date of decree for which execu [illegible] (*Bose, J*) TRIVENI BAI v DEO [illegible]

——*Widow—Nature of estate* [illegible] *tion*

A Hindu widow is not a tenant [illegible] of the property inherited by her, [illegible] trictions on alienation, and to devolution of the estate at her death upon the next heir of the last full owner. She has absolute power of disposal over the income of [illegible] of an actual reversioner, can be made [illegible] be shown that (*a*) there was legal [illegible] alienee after enquiry honestly belie [illegible] necessity, or (*c*) there was such co [illegible] versioners as would raise a presum [illegible] saction was a proper one. Such [illegible] such reversioners as may fairly be [illegible]

ested to dispute the transaction, or (*d*) there was a surrender of her whole interest in the whole estate to his next reversioners, or a transfer of the whole estate to a stranger with the consent of the next reversioners. The reversioners' consent, however, loses its probative value, where the documents disclose that their object was to [illegible]

aside—Decree—Right to mesne profits—Possession of alienee—When becomes wrongful.

A Hindu widow is not a tenant for life but is the owner of the property inherited by her from her husband subject to certain restrictions on alienation and subject to its devolving upon the next heir of her husband after her death. [illegible] vested [illegible] nation [illegible] s her [illegible] void- [illegible] next reversioner who brings a suit to set aside an alienation by the widow without legal necessity and succeeds in [illegible]

——*Widow—Powers of alienation—Gifts in favour of dependent relation and for meritorious objects—Gift to widow of predeceased coparcener for her maintenance and her daughter's marriage expenses—Gift to Brah-*

[illegible] sense a trustee for the ultimate reversioner. She is the owner for the time being, fully capable of representing the estate so long as she acts *bona fide* and in the interests of that estate, but it is an ownership qualified by limitations which are of the very essence of the estate. For obligatory or necessary observances essential for the salvation of her husband's soul, she can go to the length of disposing of the entirety of the estate, where it is not considerable and where the requirements of the particular occasion demand it. For other but less peremptory purposes, [illegible]

be allowed a reasonable latitude in the exercise of her powers provided she acts fairly and in a manner con- [illegible]

the gifts were made publicly in the presence of several

was reasonable in exten
and moral consideratio
gift, valid and binding
in favour of the four I
small pieces of land, were valid, being for good and
proper obje
law, though
ceremony,
they were e

——*Widow — Powers of — Compromise or family settlement with reversioners—Validity and binding character as against actual reversioners—Principles.*

It is undoubted that it is competent to a Hindu female holding a limited interest in the estate she holds as the heir of the last male owner to enter into a family arrangement or settlement with the reversioners
A widow or other limited owner is the o
estate for the time being and fully represent
in litigation or otherwise. So long as the
entered into by the widow with the reversior
device to divide the estate between her and
sioners to defraud the actual reversione
succession opens, a family settlement *bona*

arrangement must be upheld.
Venkataramana Rao, JJ.)
v. SINNAPENNAMMAL
47 L W. 2

——*Widow—Property ac*
tion among sons—Nature of.

The property which a widow acquires under
shara Law on a partition among sons cannot be
as property given to her in lieu of her maintena
should be treated a
one inherited from th
J.) BHAGWANTRA
SHIV I.L.R.
1

——*Widow—Repr*
costs against widow

HINDU LAW—Widow.

against any property forming part of the assets of the
rson's estate in his widow's hands. When
ty gets into the hand of the next legal re-
after the death of the widow, it still
be liable. (*Mulla, J*) MST. CHAMPA

It is not necessary for a widow of a coparcener to
in the house, to
ice. Where the
after the other
to the family,

acts of the widow. To incur a debt without legal necessity for the same is an unauthorized act of the widow and if a creditor sues for such a debt and obtains a decree and attaches the property in the hands of the widow, a cautious reversioner may sue for a declaration that these acts do not bind the reversionary interest. A

rtition in a Hindu family, the Court can direct
l mother to vacate the family house if the cir-
s demand it. She has a right to a suitable
and if one can be found among the family
it is going very far to say that the Court
cannot compel her to accept it when a fair partition
eparate
e Court

——*Widow—Suit against widow on promissory note*
debt—Considerations—Nature of
before judgment—If affects legal

Hindu widow is sued on a promis-

HINDU LAW—Widow.

must be personal and hence only the widow's interest can be proceeded against in execution. The mere

I.L.R. 1938 Nag. 382=178 I.C. 101= A.I.R. 1938 Nag 225

——*Widow—Surrender—Essentials of validity—Omission to include small portion of property in surrender through mistake or omission—If invalidates surrender.*

For a valid surrender by a Hindu widow (1) there must be a complete effacement of the surrendering widow with the intention of accelerating the succession of the next apparent heir, (2) the surrender must be *bona fide* and must not be a mere *cloak*, the real object

cannot affect the validity of the surrender, which apart from it, is a *bona fide* transaction (*Rangnekar, J.*) HARIBHAI *v* NARAYAN. I.L.R. (1938) Bom 723= 40 Bom.L.R. 876=178 I.C. 481= A.I.R. 1938 Bom 438.

——*Widows—Surrender—Validity—Conditions.*

A surrender by a Hindu widow must be of her whole interest in the whole estate in favour of the next reversioner, if only one, or of all the next reversioners, if more than one, at the time of alienation. It must be a *bona fide* surrender and not a device to divide the estate with the reversioner or reversioners. A sale of the estate for consideration cannot be regarded as a surrender (*Lort Williams, J.*) MANMATHA NATH *v* GOBINDA LAL. 68 C.L.J. 173.

——*Widow — Surrender — What amounts to—Arrangement between widow and her mother-in law in nature of vibhaga—Mother in law taking larger share—Widow reserving to herself interest in remainder in certain items and asserting claim to certain share—Nature of.*

Where a
arrangemen
fact that th
that taken
arrangement and turn it into one in the nature of a surrender by the widow. Similarly if the widow reserves to herself an interest in remainder in certain items of her husband's property and also asserts her rights to
certain shares as against the m
lifetime the arrangement can
surrender by the widow in favou
(*Varadachariar and King, JJ.*)
MAYYA. 177 I.C. 225=
11 R.M. 276=A

H. LAW OF INHERITANCE (AM.) ACT (1929)

——*Widow—Surrender—Surrender by daughter in-law in favour of aged mother-in law—Validity—*

spirit of the Hindu Law, it is
an elderly woman making a
ne lower down in the line of
male reversioner. But, it is

1938 M.W.N. 1032=11 R.M. 276=

be guided in determining the effect of a testamentary disposition; nor is there any difference between the one law and the other as to the materials from which the intention is to be collected. Primarily the words of the will are to be considered. They convey the expression of the testator's wishes, but the meaning to be

will provided that a widow in default of adoption by her under certain conditions was to enjoy the estate for a lifetime and manage it in consultation with a person *A*, then if the widow does not adopt accordingly, she is entitled to take possession of estate and enjoy its income and if that particular person *A* dies, she is not

11 R.P.C. 50=1938 A.W.R. (P.C.) 182= 4 B.R. 792=1938 A.L.R. 664= A.I.R. 1938 P.C. 228=(1938) 2 M.L.J. 562 (P.C.).

——Will — Validity of—Member of joint family sending notice of separation to the other co parcener—Will executed by the member on the next day—Death of the testator before delivery of the notice to the co parcener. *See* HINDU LAW— PARTITION. (1938) 1 M.L.J. 45.

material only when the succession opens out, and so if that event occurs after the Act has come into force, the order given in the Act should apply. (*Stone, C. J. and*

H. LAW OF INHERITANCE (AM.) ACT (1929) S. 2.

It appears to be probable that the Hindu Law of Inheritance (Amendment) Act, 1929, should apply to Jains and that the term 'Hindu' should be interpreted as including Jains more partic
wording in S. 1 (2) of the Act
SAN *v.* MST. JATNABAI 177 I (
1938 N L J. 168 =

——(Amendment) Act (II (
cability—Hindu dying intesta taking estate and dying after Succession to estate—Law app operation

Succession to the estate of a
widow surviving him is governed by the state of things which exists, not at his death, but at the death of his widow. In other words, for the purposes of succession a Hindu is deemed to have died not on the date on which he actually died, but on the date of the death of his

succession to that estate To apply the Act when the widow dies after the Act is in no sense to make the Act retrospective (*Broomfield and Norman, JJ*) SHANKARRAO *v.* SHANTIBAI. 40 Bom L R 1201.

——S 2—*Sister—If includes half sister.*

The word 'sister' in S. 2 of the Act includes half sister. Consequently the son of the half blood and the son of the full blood both fall within the class referred to as 'sister's son' in the Act It does not, however, follow that in contest between the son of a sister of the full-blood and the son of a sister of the half-blood the two would be deemed equal (*Stone, C. J. and Bose, J.*) SHANKAR *v.* P

——S 2—'
'Sister' in
ment Act dc
Row and V
MUTHIRIAN

——S 2—'
The term
Inheritance
half siste
(*Stone, C*
THAGAN
1

HINDU
1856).
Widow's right to maintenance—Execution of promissory note by co-parceners to her uncle as guardian—Ratification by widow—Suit on promissory note—Remarriage if provides a defence to the suit—Widow if necessary party to suit.

balance due under the promissory
of the suit, the widow remarried,
that by virtue of S. 2 of the Hindu Widows Remarriage

Act, the widow having remarried forfeited her claim to maintenance and as such the balance due under the promissory note cannot be claimed.

Held, (1) that though the widow was a beneficiary

——Ss 6 and 7—*Re-marriage of widow—Validity—Performance of ceremonies—If essential.*

There can be no valid marriage in any form without a substantial performance of the requisite religious ceremonies. The performance therefore of the necessary rites is necessary for the completion of a e even in a gandharv form, of which re-marriage ow is an instance. So, neither the consent of a widow to re marry herself under last paragraph of S. 7 nor mere talk by a person in the presence of visitors of his intention to take her as his wife is sufficient to constitute a valid marriage in the absence of the performance of some religious or secular rites. 12 Mad. 72; Rel. on. (*Baguley and Spargo, JJ*) N. PADAYACHI *v.* A. AMMAL. 174 I.C. 312 = 10 R R. 399 = A I.R. 1938 Rang. 59.

HUSBAND AND WIFE.

See (1) DIVORCE.
(2) HINDU LAW—RESTITUTION OF CONJUGAL RIGHTS.
(3) MAHOMEDAN LAW.

brother who is

nsequence of a
brother who is
d in his place,
against his
KHAN *v.* NUR
17 L.L.T. 11.
2) (Burma)—
of.
plying English
under the Burma Income-tax Act,
of the English Income-tax Act,
of the Burma Income tax Act,
erent. (*Roberts, C. J., Mya Bu*
OMMISSIONER OF INCOME-TAX,
CONCERN.
Rang L R. 346 = 10 R.R. 480 =
175 I C 287 = A I.R. 1938 Rang. 151 (S B.).

——Ss. 2 (1) and 4 (3) (viii)—*Agricultural income—Income of dairy when amounts to.*

Where cattle are wholly stall fed and not pastured upon the land at all, doubtless, it is trade and no agricul-
ss fed
y well
milk is
xtremes
ie task

ground, and whether they did so or

residuary legatees under the will of their grandfather to certain house properties in Bombay in the year 1929 They got possession of the properties and managed it as joint owners and derived profit therefrom.

Held, that as soon as they elected to retain the properties and manage them as a joint venture producing income, they became an association of Individuals within the meaning of S. 3 of the Income-tax Act and they were properly liable to be assessed as the owners of the properties under S. 9 (*Beaumont, C. J. and Blackwell, J*) COMMISSIONER OF INCOME-TAX, BOMBAY *v* DWARKANATI

177 I.C. 447=11 R B

———S. 4—Appropriatic

agreement with debtor—Incometax authorities—If can ignore *See* CONTRACT ACT, SS 59 TO 61.

A.I.R. 1938 Cal. 20.

———S 4—*Assessee resident in British India carrying trade there and controlling transactions abroad—Profits not received or brought into British India—Assessability.*

A person in British India carrying on business there and controlling transactions abroad in the course of such business is not by these mere facts liable to tax on the

tion as dividend—If to be deemed to be received in British India

Where the income derived by a company by way of interest on its investments abroad is again re invested abroad and retained there without being remitted to British India, and the investments retain their character of interest received abroad, such interest cannot be said to have been received in British India within the meaning of S. 4 of the Income tax Act. The mere fact that the amount of that income has been brought into account in ascertaining the profits for the year and has been taken into account in determining the amount to be paid in dividend to the shareholders of the company is irrelevant, unless it be proved that this actual income

auctioneer's commission—If exempt from tax.

The element of periodical receipt or regularity or expected regularity of money return is an essential ingredient of 'income' under the Income tax Act. Certain debenture holders of a company obtained a decree against the company in respect of arrears of interest on the debentures and in execution brought the property of

the amount due to the debenture-holders The debenture holder who was appointed auctioneer moved the Court to be allowed to deposit poundage payable to Government at the rate of 1½ per cent. instead of 6½ per cent. treating the remaining 5 per cent as auctioneer's commission. The Income tax Officer assessed him to income-tax, in respect of the 5 per cent auctioneer's commission.

Held, that in the circumstances it would be unreasonable to regard this as 'income.' In any event even if the ...re holders be regarded as a

arise out of any business or vocation or occupation and ...rring nature and hence ex... of the Act. (*Thom, C.J.*, A. V. JOHN *v.* COMMIS-

him liable to tax in respect of such sums and where the assessee had kept his accounts according to the mercantile system, and had in the prior years treated similar sums as profits of the firm it was held that the profits in question though they did not actually arise or accrue in British India and were not physically transferred to, or received in British India, such profits, however, must be deemed by reason of S 13 of the Act to have arisen or accrued in British India. Further as the assessee had in past years treated such profits as having been received in British India and his accounts on that basis had always been accepted by the taxing authorities, by reason of S. 13 of the Act the assessees could not seek suddenly to change their method of acc

INCOME TAX ACT (1922), T. 4

(*Harries and Mulla, JJ.*) KANWALNEN HAMIR SINGH v COMMISSIONER OF INCOME-TAX.
1938 A.L.J. 1015 = 1938 A.W.R. (H.C.) 722.

——S. 4 (2)—*Construction—"Received or brought into British India"—Limited Company in Bombay having income in London—Investment of such income in purchase of stores and machinery in England—Such stores and machinery sent to India but not for sale—If taxable*

Foreign income may be received under S. 4 (2) of the Income tax Act *in specie* or in any form known to the

t

India income, pofits or gains. Whether the foreign income has in fact been capitalised or not must be a question of fact in each case. The assessees, a limited company in Bombay, had in the year of assessment certain income amounting to Rs. 18,000 and odd, which they received in London They invested that income, or at any rate the bulk of it, in the pur stores and machinery in England, which th shipped to Bombay, but not for the purpose sold and the proceeds applied as income.

Held, that the income received in London was capitalised by the purchase of machinery and stores, and the assessees were not therefore liable under S. 4 (2) to pay income tax on the stores and machinery which represented the income received t

C. J. and Blackwell, J.

TAX BOMBAY v AH

India on that date

Where in discharge of certain debts due in respect of a foreign business, a British Indian decree is assigned in British India

Held, that the transaction amounts to remittance in British India of money or money's worth even though

foreign business—Profits earned in one and lost incurred in another—If to be set off against each other.

In deciding whether sums which are brought in from a business abroad are income, profits, or gains, the

INCOME TAX ACT (1922), S. 4.

YANAN CHETTIAR, v. COMMISSIONER OF INCOME-TAX, MADRAS. 48 L W. 899 (S B.).

——Ss 4 (3) (vii) and 10—*Banking concern—Profits from sale of securities—Assessability—Test.*

The question of the assessability to income-tax of profits realised by a banking concern from the sale of securities and shares must be determined on the facts of each case whether the banking concern had been dealing in securities and shares as part of its business. In this matter the finding of fact arrived at by the Income-tax authorities is conclusive unless it is found that that

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LTD., AMRITSAR v. THE COMMISSIONER OF INCOME TAX I.L.R. 1938 Lah 526 = A I R. 1938 Lah 852.

——S. 4 (3)—*"General public utility"—Meaning of.*

An object of "general public utility" within the mea-

benefit works of public utility confined to a section of the public, *i e*, those interested in commerce. (*Beaumont, C.J. and Kania, J.*) COMMISSIONER OF INCOME TAX, BOMBAY v. GRAIN MERCHANTS
40 Bom. L R. 1227.

) and 66 (5)—*Profits from* *nts—If taxable—Exemption*

fixed capital or of stock in trade, and whether such profits were exempt from payment of income-tax under S. 4 (3) (vii) of the Act.

Held, that if an investment is made with the object of permanenently excluding a certain sum from the floating capital of a concern, it might be held to be fixed

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same business, and hence the receipts therefrom were to all intents and purposes receipts from business. Even if they we

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INCOME TAX ACT (1922), S. 7.

the test to be applied in deciding as to whether it is capital assets or gain is to see whether there was a gain made in an operation of business in carrying out a scheme for making profits. (*Roberts, C.J., Mya Bu and Sharpe, JJ.*) COMMISSIONER OF INCOME-TAX, BURMA v. B B. JUBB. 177 I C. 630= 11 R.R 156=A.I.R. 1938 Rang. 315 (S.B)

——Ss. 7 to 12—*Taxable income—Executors spending amounts out of income—Exemption.*

Where the executors made payments for the *shradh* expenses and for the costs of probate, out of the income of the estate coming into their hands as executors and in pursuance of obligations imposed on them by the testator, it is simply a case in which the executors having received the whole of the income of the estate apply a portion in a particular way pursuant to the direction of the testator and as such no allowance could be made in respect thereof in computing the taxable income. (*Lord Russell of Killowen*) P. C. ... v. COMMISSIONER OF INCOME TAX, BE...
65 I.A. 150=I.L.R (193 ...
32 S.L.R 409=40 B...
1938 A W R (P C) 87=42 C W.N. 537=
173 I C 763=1938 P W N 262=1938 O W.N. 385=
19 Pat L T 290=(1938) M W.N. 401=
1938 O L.R. 175=1938 A L.R 247=
47 L.W. 614=1938 O.A. 389=10 R P C 247=
4 B.R 472=67 C L J 101=1938 A L J. 261=
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A and *B* who carried on a joint business separated and divided between themselves the assets and liabilities of the joint business. Thereafter each carried on his separate business which had nothing to do with the former joint business *B* during a year of assessment claimed that an outstanding debt assigned to him in partition with *A* was irrecoverable and hence should be exempted.

Held, that the loss claimed w... capital loss and hence could not be ... *and Lort Williams, JJ*) BISSE... *In re.*

——S. 10 (2)—*Bad debt—Debt—When becomes bad debt.*

In 1930, the assessee with a number of other cocreditors seized the property of the debtor and paid themselves to ... transaction re... The assessee ... system In ... to deduct Rs. 1,600 which remained unpaid, from the total assessable income as a bad debt It was found however that subsequent to the year 1930, the assessee d...

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S ... A...

A I R. 1938 Pat 577

——S 10 (2)—*Loss by theft or embezzlement—Right to deduction*

A loss whether by embezzlement or whether by theft is not one of the allowances which is allowable to the assessee under S. 10 (*Courtney-Terrell, C. J. and Agarwala, J*) MULCHAND HIRALAL v COMMISSIONER OF INCOME-TAX, B. & O.

INCOME TAX ACT (1922), S. 10.

17 Pat 102=174 I C. 580=1938 P.W N. 247= 4 B R. 459=10 R P. 527=19 Pat L T 176= A I.R 1938 Pat 159.

——S 10 (2) and (3) Expl—*Mutual Benefit Society—'Fund' floated with capital subscribed by shares—Chief income derived from loans to share holders—Taxability.*

A company was floated with members subscribing its capital by way of share. The main source of income was the interest on the loans advanced to the shareholder members. It also derived interest on its securities, etc. In giving the return, the fund did not show the interest derived from the loans to the share holders as its income. Question was if that income was assessable.

Held the fund though a registered company was in fact a Mutual Benefit Fund Society and that income was not assessable, in enacting the Explanation to S 10 (2) ...

...COME TAX, MADRAS v. TANJORE PERMANENT FUND LTD. 176 I C 374=11 R M 83=47 L W. 28= A I R 1938 Mad 57 (F B).

——S 10 (2)—*Right to deductions—Burden of proof.*

It is a well settled principle that if any deduction is claimed, it is for the assessee to prove that that deduc...

A I R. 1938 Lah 530

——S. 10 (2)—*Scope—Assessee having two businesses—Deductible items in one mistakenly entered in other—Claim to exemption at next assessment—Sustainability—Remedy of assessee*

An assessee carried on two businesses one of selling goods in his own shop and the other of selling goods on commission In an accounting year while submitting a ... d some items in his ... nder his commission ... exempted from tax ... subsequent year he sought to deduct those items from his income.

Held, that the proper remedy for the assessee was to move the income tax authorities and to show to their satisfaction the mistake he had made and to claim a ... deduction in ... *J and Agar*... OMMISSIONER 17 Pat. 102= 174 I C 580=4 B R 459=10 R P. 527= 1938 P W N 247=19 Pat L T 176= A I R. 1938 Pat 159

...

... (2) of S 10 of the Income tax Act. (*Addison and Din Mahomed, JJ.*) GOBI NATH VIR BHAN v. COMMISSIONER OF INCOME-TAX, PUNJAB. I L R (1938) Lah 426=40 P L R 228= A I R 1938 Lah 530

——S 10 (2) (iii) and Expl—*"Mutual Benefit Society"—Fund granting loans to persons becoming nominal members on payment of rupee one for share—Such members entitled to withdraw share subscription*

sion or under the control of the person making the return. The legislature could not have intended to impose a penalty on a person for non-production of documents which he does not control.

Kania, J.—There is no justification in law to call upon one friend to produce the books of another under S. 22 (4) and then in default to make the party called upon liable under S 23 (4). (*Beaumont, C.J. and Kania, J.*) COMMISSIONER OF INCOME TAX, BOMBAY *v.* BOMBAY TRUST CORPORATION.

40 Bom. L R. 1222.

——S 23—*Scope of—Duty of income-tax officer under.*

S 23 of the Income-tax Act deals with matters of *assessment* and not with '*computation* of the income, profits and gains for the purposes of Ss 10, 11 and 12'. It deals with '*return*' and not primarily with accounts If the return is 'correct and complete' then the income-

option to do anything else. (*Stone, C. J. and Bose, J.*) COMMISSIONER OF INCOME-TAX *v.* ACHHRULAL.

1938 N L J. 172 = A I.R. 1938 Nag. 485

——S. 23 (1)—*Assessment—Finality.*

When once the Income tax Officer has made the assessment under S. 23 (1), that assessment is settled. On the general principles of law governing estoppels, neither the subject nor the Crown ought to be at liberty to go behind the amount of profits and gains when once determined by any competent authority. The once made according to the provisions of th tax Act can only be reopened in accordanc provisions of the Act (*Derbyshire, C.J., and Mukherjea, JJ.*) MAHALIRAM RAMJ... *the matter of.* **177 I C. 255 = 11 R C. 217 = A.I.R 1938 Cal. 557 (S B).**

——S 23 (2) and (3)—'*Evidence*'—*If confined to direct evidence—Omission of transactions from account books—Rejection of such books by Income-tax Officer—If justified.*

The word 'evidence' as used in S Income-tax Act, is not confined to

rough average of sale for the last 10 years. Though the sale for the accounting period was shown as considerably

——S. 23 (4)—*Assessment under—Income tax Officer calling upon assessee to produce all account books—Assessee withholding some.*

What happens in a subsequent year cannot be taken to be a criterion for what should have happened in the previous year, and if an order made by the Income tax Officer is not open to objection on any legal ground, it cannot be set aside merely on the ground that in any subsequent year he himself, or his successor did what he refused to do previously. Where therefore an Income-tax Officer calls upon the assessee to produce all the account books but the assessee withholds some, the Income-tax Officer is entitled to make assessment under S. 23 (4) even if he bases the assessment of the next year on the same material in the account books produced by the assessee in the previous year. (*Addison and Din Mahomed, JJ.*) TULSIDAS NAGIN CHAND *v.* COM-

.0 P.L.R 821 = 1938 Lah. 551.

——S. 23 (4)—*Assessment under—Interference—Inherent jurisdiction of High Court.*

The jurisdiction exercised by the High Court under the Income tax Act is a special jurisdiction and is consequently circumscribed within the limits specified in the statute. The power of revising, reviewing or interfering in any other manner with an assessment made under S. 23 (4) being nowhere conferred upon the High Court expressly or impliedly by the Act, no such power can be exercised merely by virtue of the general inherent juris- ... ND *v.*

... 222 = ... h. 545.

——S 23 (4)—*Best judgment assessment—Duty of I. T. officer.*

The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly, or vindictively or capriciously because he ... He must make ... ee's circumstances, and returns by and assess... ther matters which he at a fair and proper necessarily be guess... be honest guesswork ... *ammad, J.*) MUBARAK ... OME-TAX, LAHORE.

A I R. 1938 Lah. 867.

——S. 23 (4)—*Determination of tax—Power of*

INCOME TAX ACT (1922), S. 23

—— Ss. 23 (4), 33, 34 and 35—*Final assessment under S. 23 (4)—When can be reopened—Powers of Commissioner.*

It is true that the Act nowhere imposes any limit of time within which an assessment under the provisions of Ss. 23 and 29 is to be made, and that the service of the notice of demand can therefore be made at any time But it is not true that after a final assessment under those sections has been made, the Income tax Officer can go on making fresh computations and issuing fresh notices of demand to the end of all time. When once a final assessment is arrived at, it cannot be reopened except in the circumstances detailed in S. 34 and S. 35 of the Act and within the time limited by those sections. It is quite impossible to suppose that the Income tax Officer may in every kind of circumstance and after any lapse of time make fresh assessment or issue fresh notices of demand, or that the Commissioner can direct him to do so. The Commissioner's powers under S 33 can only be exercised subject to the provisions of the [illegible]

... super tax more than one year after final assessment under S. 23 (4) is beyond the powers of Income tax Officer. (*Lord Romer.*) COMMISSIONER OF INCOME-TAX. 6! [illegible]

A.I.R. 1938 P C 175=(1938) 2 M L J 115 (P.C.)

——S. 25 A—*Applicability—Conditions.*

The language of the section makes it clear that an order declaring separation shall only be passed if (1) [illegible]

... enter into a partnership in respect of a portion of joint property which they h... while retaining the ... keeping the rest of t... *Bajpai, JJ*) SUND... INCOME TAX ... 1938 A ... 177 I C. 260=1938 A L R 72...

——Ss. 25 A, 26 (2) and ...

Hindu undivided family assessed as such — Separation by partition — Separated members constituting themselves into firm—Application for registration and for assessment under S 26 (2)—Competency—Proper procedure for assessment

The assessees who were a joint Hindu family consisting of a father and his seven ... who were hitherto assessed as an undivided ... separated during the year of account, and short... after the father and his seven sons formed th... into a firm and applied to the Income tax (... register the firm under S 26 A of the Income tax Act, and to make the assessment under S. 26 (2)

Held, (1) that there had been no succession within the meaning of S. 26 (2) of the Act, and the Income tax

Officer was therefore not bound to register the firm under S 26-A and to assess under S. 26 (2), (2) that the Income tax Officer was bound to make the assessment under S. 25 A (2) of the total income received by the joint family as such and to hold each member liable for his proportionate share of the tax so assessed. (*Beaumont, C J. and Blackwell, J.*) COMMISSIONER OF INCOME TAX, BOMBAY v. JESINGBHAI

176 I.C 817=11 R.B. 52=40 Bom. L. R. 452= A I.R. 1938 Bom 350.

——S 25-A—*Enquiry under—Discretion of Income-tax Officer—Reference to High Court.*

Under S 25-A of the Income tax Act, the Income-tax Officer has a discretion to conduct an inquiry in such manner as may seem to him, in his judgment, to be best in the circumstances of the particular case and to hear such evidence, and such evidence only, as he may in his discretion consider it necessary to hear to enable him to come to a decision on the question whether a separation of the members of the family has taken place or not. [illegible]

... *Dunkley, J.*) BANSIDAR & SONS v. THE COMMISSIONER OF INCOME-TAX BURMA 177 I C 582= 1938 Rang L.R 130=11 R R. 141= A.I R. 1938 Rang. 154.

——S. 25-A—*Hindu undivided family—Claim to be assessed as members of contractual partnership—Proof required.*

Before persons who have been previously assessed as a Hindu undivided family can claim to be separately assessed as members of a contractual partnership, they must establish that the joint family has been dissolved 57 Cal 1336 relied on. (*Roberts, C J and Dunkley, J.*) BANSIDAR & SONS v. THE COMMISSIONER OF INCOME TAX, BURMA. 1938 Rang L R 130= 177 I.C 582=11 R R 141=A I R 1938 Rang 154.

——S 26—*Reconstitution of firm —Evidence.*

... n to any person to reduce the incidence of his ... in any legitimate way, and the mere fact ... onstitution of the firm has reduced the inci dence of the tax is by itself no evidence that the reconsti... t the time of the reconsti... w capital was not introduced. ... ion of assets After registra... firm reverted to its old con... re not sufficient grounds for [illegible]

A I R. 1938 Lah. 194.

——S 26 (1)—"*Change in constitution of firm*"—*Meaning of.*

The words "change in the constitution of a firm" mean a change in its partners or personnel but not a [illegible]

Transfer of agency by one agent to another.

Firms *A* and *B* carried on business at different areas in their own names, part of their business being to represent solely in their respective areas, a company

INCOME TAX ACT (1922), S. 26.

facturing machines. *B* transferred the stock-in-trade relating to agency, hire purchase agreements about the

under S. 26 (2). (*Rupchand Bilaram, Ag. J. C. and Mehta, A. J. C.*) TOLARAM RAMDAS *v.* COMMISSIONER OF INCOME TAX, BOMBAY AND ADEN.

32 S L R. 203=173 I.C. 786 (2)=10 R S 227= A I.R. 1938 Sind 33.

——**S. 26 A**—*Application under—Duty of Income-tax Officer—Decision as to separation.*

It is open to the Income-tax Officer to suspend orders on an application already presented under S. 26 A by members of a Hindu family until the assessment proceed ings are held. If at the time of making the a a claim is made under S. 25 A it is the du Income tax Officer to decide whether there h separation of members and a partition of the within the meaning of sub-s. (1) of that secti is found that there has been such separation and partition an order will be passed to that effect, and if it

——**Ss 26 A and 2 (14)**—*Registration Power of income-tax authorities to go into eve*

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the firm to prove that a genuine

towards the capital of the firm,

INCOME-TAX ACT (1922), S. 30.

OF INCOME-TAX, LAHORE. **I.L R. 1938 Lah. 113= A.I R. 1938 Lah 105.**

ed by a deed of partnership which was not registered under the Registration Act but which purported to specify the individual shares of the partner.

Held that as the gifts were not made in accordance with the provisions of S. 123, T. P. Act, there were no valid gifts by assessee to his sons and employees and hence there were no contributions by them to the capital of the alleged partnership. Moreover, the capital of the business consisted mainly of immovable property and as it had not been registered under the Registration Act, it was also ineffectual,

A.I.R. 1938 Rang. 435.

——**S. 28**—*Assessee claiming false deduction—Liabi-*

s has been used in the Income tax and it connotes the assessable accounting for all the legitimate tions and consequently if any false particulars about any item ed for before the assessable figure himself within the clutches of assessee who deliberately claims a

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S. 28 (1)—*Imposition of penalty after* ...

but out the nces of the on. A.I.R.

INCOME TAX ACT (1922), S. 31.

1929 Lah. 593: 10 L. 596 (F.B.), Appr. (*Lord Romer.*) COMMISSIONER OF INCOME-TAX, BOMBAY v. KHEMCHAND RAMDAS.

65 I.A. 236=I.L.R. 1938 Bom 487=175 I.C. 1=42 C.W.N. 873=10 R.P.C. 303=48 L.W. 47=1938 O.L.R. 291=67 C.L.J. 442=4 B.R. 645=1938 A.L.R. 436=1938 O.W.N. 621=1938 P.W.N. 568=1938 A.W.R. (P.C.) 163=32 S.L.R. 549=1938 A.L.J. 754=1938 M.W.N. 888=40 Bom L.R. 854=A.I.R. 1938 P.C. 175=(1938) 2 M.L.J. 115 (P.C.)

——Ss 31 (3) (a) and (b) and 34—*assessment—Limitation.*

No doubt S 31 of the Income tax A Assistant Commissioner of Income tax to enhance an assessment, but that power cannot be exercised irrespective of the limitations imposed by S 34 The Assistant Commissioner is not, therefore, legally

35. A.I.R. 1938 P.C. 175.

——S. 34—*Action under—Duty of Income tax Officer—Assessee's right to be heard.*

It is the Income tax Officer who is to decide whether income chargeable to tax has escaped assessment, he is the person charged with the duty of taking action under S. 34 where such action ought to be taken Apart from the assessee no person other than the Income-tax Officer can by reason of S. 54 of the Act have any knowledge of the first assessment and upon what date it was based, and none else is in a position to decide whether income has escaped assessment or not. In deciding whether income has escaped assessment the Income tax Officer must not act on suspicion or conjecture; he must decide the questions upon a fair and reasonable consideration of such information and materials as were available to him He need not hold a formal enquiry, but he should indicate to the assessee the nature of the alleged escapement so as to enable him to identify it and explain it if he can In other words he should give the ... of being heard before he ... income has escaped assessme ... the settled assessment If ... satisfied with the assessee's ex ... of the matter. On the other h ... deration of all the informatic ... him, including the explanation ... the failure of assessee to give ... alleged escapement the Inco...

...shire, C.J., Khundkar and Mukherjea, JJ.) ...LIRAM RAMJEEDAS, *In the matter of*

177 I.C. 255=11 R... A.I.R. 1938 Cal 5...

INCOME-TAX ACT (1922), S. 43.

——Ss. 34 and 23 (4)—*Best judgment assessment—If can be reopened.*

When once a final assessment is arrived at, it cannot be reopened except in the circumstances detailed in S. 34 and S. 35 of the Act and within the time limited by those Sections This evidently implies that even the "best judgment" assessment can be reopened under S 34. (*Addison, Ag C J and Din Mohammad, J.*) MUBARAK ALI v. COMMISSIONER INCOME-TAX LAHORE. A.I.R. 1938 Lah 867.

S 42 of the Income-tax Act provides the method of charging a non-resident and lays down that his profits

does not militate against the above view, but it only contemplates the possibility of the assessee, (i e) the agent not being able to pay the tax and provides the necessary method of recovery The word 'agent' for the purposes of S 42 has a wider scope than it has in ordinary use (*Collister and Bajpai, JJ*) MAHARAJAH OF BENARES v COMMISSIONER OF INCOME-TAX

I.L.R. 1938 All 432=176 I.C. 167=1938 A.L.R. 575=11 R.A. 76=1938 A.W.R. (H.C.) 247=1938 A.L.J. 341=A.I.R. 1938 All. 310.

——Ss. 43 and 22—*Notice served on assessee as agent of non resident—Question of agency—When must be determined*

It is open to the Income-tax Officer under the Income-tax Act to postpone any final determination of the question of agency until the time comes to make an assessment under S 23, as the Act imposes no technical requirement in this connexion. It may be reasonable

...it ...an ...are ...ted ...IS-

INCOME-TAX ACT (1922), S. 43.

47 L.W. 16=1938 A.L.J. 41=1938 A.L.R. 1= 1938 O.L.R. 1=1938 M.W.N. 41= A.I.R. 1938 P.C. 8=(1938) 1 M.L.J. 123 (P.C.)

——S. 43—*Notice under, not mentioning year for which assessee was to be treated as agent—Notice under S. 22 (2) specifying year—Assessment, if illegal.*

The notice is by S. 43 made part of the series of facts which results in the resident being deemed agent by force of the section. The extent of his responsibility if

Income-tax Officer proposed to treat assessee as an agent. (*Sir George Rankin*) COMMISSIONER OF INCOME-TAX, PUNJAB *v.* NAWAL KIHSORE KHARAITI LAL. 65 I.A. 12=I.L.R. 1938 Lah 129= 1938 A.W.R. (P.C.) 10=

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sale

Crown for payment out towards income-tax due by assessee—Competency—Power of Court to order payment. *See* C. P. CODE, S. 151. (1938) 1 M.L.J. 351 (F.B.).

——S. 48 A—*Applicability.*

S. 48-A of the Income-tax Act comes into play only when the income-tax has been actually paid in excess and not earlier. (*Addison and Din Mohammad, JJ.*)

party to produce.

The object of S. 54 of the Income tax Act clearly is to make the income-tax returns and statements confidential as between the assessee and the income tax department, and against the whole world, except for

ing deficiency—Power of department to go behind balance sheet

Where in the case of an assessee who is a Life Insurance Company, the actuarial valuation balance sheet on the last date of the last preceding valuation shows a deficiency. R. 25 of

the Income tax Act do

go behind the said val

there were any profits

preceding valuation.

INCOME-TAX ACT (1922), S. 59.

Mukherjea, JJ.) HIMALAYA ASSURANCE CO., *In the matter of.* 42 C.W.N. 440.

——S. 59—*Rules framed under R. 25—'Last preceding valuation'—Meaning of—Insurance Company—Actuarial reports in* 1930 *and* 1934, *December—Return of income for* 1933—*Basis of assessment, the* 1930 *or* 1934 *report.*

The expression 'last preceding valuation' in R. 25 framed under S. 59 of the Income-tax Act, does not

a return of income based on the actuarial valuation made in December 1930, but the Income-tax Commissioner claimed that the return of income ought to be on foot of the actuarial valuation made in December 1934.

Held, that the return as made by the company was

last preced-

d was only

Leach, C.J.,

SSIONER OF

RANCE CO.,

Mad. 270=

W.N. 81=

Mad 145=

(1938) 1 M.L.J. 11 (F.B.).

——S. 59 (2) (a) (ii)—*Rules under R. 30—Construction—'May be treated as expenditure"—Meaning of—If confers option on Income tax Officer—Right of assessee—Sums set aside towards depreciation—If to be brought back in time of appreciation of securities.*

The words "may be treated as expenditure" in R. 30 of the rules framed under S. 59 (*a*) (*ii*) of the Income

ed as conferring upon the

n him alone the option to

depreciation of, or loss on

carried to a reserve fund

se, and not used for any

other purpose, as expenditure incurred solely for the purpose of earning the profits of the business Such a construction would do violence to the plain words of the rule The rule really confers an option on the assessee to write off in his accounts to meet depreciation or to carry

of the sums set apart towards the reserve fund as an item of expenditure.

Held, that the sums having been properly placed to the special reserve in the first two years of the triennial period, there was nothing in the rules which required

of earning the profits of the business, and there was nothing in the rule to compel the assessee who has exercised his option to bring back the sums properly set aside under the rule. The mere fact that there was any appreciation in the securities in the third year was entirely irrelevant. (*Beaumont, C. J. and Blackwell, J.*) Co ... v. WESTE ...

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——S. 63—*Notice to* ... *trading name—Sufficienc*...

A notice addressed ... in its trading name is ... requirements of S. 63. ... *Agarwala, J.*) SONU ... INCOME-TAX, BIHAR AN...

17 Pat. 187=174 I C. 287=4 B.R. 423=
10 R P. 497 (1)= A.I.R. 1938 Pat. 91.

——S 66—*Question of fact—Advance made by partner—If loan or increase in capital.*

The question whether an advance made by a partner is a loan to the partnership or an increase in the capital of the firm is a question of fact, and when once the Income-tax authorities have held that it was by way of ...

——S. 66—*Referen*... *ing several questions* ... *abstract—Propriety o*...

When questions ... of Income tax for the ... question should be ... should not be made to combine two or more questions in the form of one question. The questions should not be ...

——Ss 66 (2) and (3)—*Application by assessee to High Court—When competent.*

Before an assessee can put in an application to the ...

principle to the question of fact to be decided would have arrived at the same conclusion (*Roberts, C.J., Mya Bu and Sharpe, JJ.*) COMMISSIONER OF INCOME TAX, BURMA v. B B. JUBB. 177 I C. 630=
11 R R. 156=A.I.R. 1938 Rang. 315 (S B.)

——S. 66 (2)—*Reference—Scope of investigation.*

The High Court is not competent to investigate matters of fact in a reference under S. 66 (2). Whether or no in any particular case there is any evidence to support the finding of fact arrived at below is, of course, ...

A.I R. 1938 Rang 315 (S B).

——S 66 (2) and (3)—*Competency of appeal to Assistant Commissioner in question—Decision of Commissioner adverse to assessee—Assessee's right to get question decided by Court.*

Where one of the questions of law arising out of the order of the Assistant Commissioner was whether the appeal to him was competent in view of the proviso ...

——(as amended in 1933), S. 66 (2) and (3)—

... is prejudicial to the assessee (*Puranik, J*) TRIMBAK v. COMMISSIONER OF INCOME-TAX 172 I C 511=
10 R.N 213=A I R. 1938 Nag 16.

... *Dunkley* ... ME-TAX, ... R 56= ... (F.B).

——S. 66 (3)—Decision of

and to refer a question of law to the High Court which the assessee has not duly required the Commissioner to refer under S. 66 (2). (*Roberts, C. J. and Dunkley, J.*) ABBA DADA & CO. *v.* COMMISSIONER OF INCOME TAX, BURMA. A.I.R. 1938 Rang. 435.

——S. 66 (3)—Question of law—Computation of profits at a high rate—If a ground to direct Commissioner to state a case. *See* INCOME-TAX ACT, SS. 13 AND 66 (3). 1938 A.W.R. (H C) 332 = A.I.R. 1938 All 367.

——S. 66 (3)—*Question of law not raised in application under S. 66 (2)—Right to demand reference in respect of.*

Where an applicant has failed to raise a particular question of law in his application under S. 66 (2), he is not entitled to require the Commissioner under S. 66 (3) to refer to the High Court that particular question of law. (*Derbyshire, C. J. and Costello, J.*) BABULAL RAJGARHIA, *In the matter of.* 177 I.C. 300 = 11 R.C. 221 = A.I.R. 1938 Cal. 168.

——S. 66 (3)—*Question not raised before Commissioner—Jurisdiction of High Court to entertain.*

Under S. 66 (3) of the Income-tax Act, the jurisdiction of the High Court is confined only to those matters which are contained in the application made to the Commissioner under S. 66 (2) and it is only in relation to such matters that the refusal of the Commissioner to state the case can be investigated by the High Court. Consequently if a point is not raised before the Commissioner, it cannot be raised for the first time before the High Court under S. 66 (3). (*Addison and Din Mohammad, JJ.*) SOM CHAND-MALIK CHAND *v.* COMMISSIONER OF INCOME-TAX. I.L.R. 1938 Lah 477 = 177 I.C. 222 = 11 R.L. 283 = 40 P.L.R. 308 = A.I.R. 1938 Lah. 515.

——S. 66 (5)—Finding of fact—High Court, if can interfer

AND 66

of leave to Income tax Commissioner—Power to impose conditions.

In granting leave to appeal to His M

on the application of the Income tax

High Court has no power to impose a

effect that the Income tax Authorities

costs of the assessee respondent. The

High Court are confined in this respect

ferred by S. 66-A of the Income tax

visions of the Civil Procedure Code

made applicable to such appeals.

Council have, on occasions, stipul

special leave that the appellant shall

powers. (*Leach, C.J. Varada-* COMMISSIONER OF INCOME- MATHIAS. 174 I.C. 491 = M.W.N. 465 = 47 L.W. 350 = A.I.R. 1938 Mad. 352 (F.B.).

——S. 66 A (2)—*Leave to appeal to Privy Council—Fit case—Substantial question of law—Question as to effect of S. 4 (2), proviso 2.*

The question as to the effect of the second proviso to S. 4 (1) of the Income tax Act is a substantive question of law, and is a fit one for appeal to His Majesty in Council.

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——S. 66-A (2) and (3)—*Valuation—Annual assessment of income-tax less than Rs. 10,000—Leave to appeal—If to be granted.*

In an application for leave to appeal to His Majesty in Council in respect of an assessment to income-tax involving only Rs. 3,500, leave ought not to be refused merely because the assessment in question is less than the required amount of Rs. 10,000. Where the assessee carries on a large business and the question is likely to arise every year while he remains in the business, the amount in the end would be very considerable; a certificate of leave to appeal should therefore be granted in such a case. (*Leach, C.J., Varadachariar and King, JJ.*) COMMISSIONER OF INCOME-TAX, MADRAS *v.* S. L. MATHIAS. 174 I.C. 491 = 10 R.M. 716 = 1938 M.W.N. 465 = 47 L.W. 350 = A.I.R. 1938 Mad. 352 (F.B.).

INDEMNITY. *See also* CONTRACT ACT, SS. 124-133.

——Contract of—Vendee undertaking to pay off mortgage debt of vendor—If amounts to—If should be express or can be implied. *See* LIMITATION ACT, ARTS. 83 AND 116—APPLICABILITY. 1938 A.L.J. 455 (F.B.).

——*Principle underlying—Nature and extent of protection.*

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TARY OF STATE *v.* BANK OF INDIA, LTD

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Act of

INLAND STEAM VESSELS ACT (1917), S 58.

1937—*If available in suit after 1937—Desertion by husband—Right to divorce.*

The words "law for the time being in force in England" in Proviso (*a*) to S. 1 (1) of the Indian and Colonial Divorce Jurisdiction Act, in their natural adaptation mean the law in force at the time when grounds of divorce fall to be considered in the suit, and not the law in force at the time of the passing of the Act of 1926. The reference to a "Court in India having such jurisdiction" in S. 1 (1) only limits the class of persons to whom a decree of dissolution can be granted, but does not affect the grounds upon which such a decree

A.I.R. 1938 Bom. 425.

INLAND STEAM

S. 58—*Applicability—*
of number entered in
Certificate not in force
If bar to conviction.

The fact that the cert
steamer is under renewal at the time of the offence does not render S 58 of the Inland Steam Vessels Act inapplicable. For the purposes of S 58, the certificate intended is the certificate last issued for the steamer and it is immaterial that that certificate was under renewal at the time. If passengers are carried in excess of the certified number, *i.e.*, of the number entered in the certificate as being in the ju
surveyor the number which the
there is a contravention of the
and master of the vessel as liable
does not require that the cert
requires that the steamer mu
number of passengers which
of the surveyor, as entered ir
of survey, it is fit to carry
is under renewal and not in
to conviction (*Madan, J*) RIVER STEAM NAVIGATION CO, LTD *v* EMPEROR 16 Pat 668=
1937 P W N 813=18 Pat L T 941=
4 B R 232=173 I C. 249=39 Cr L J. 275=

voyage of the passengers,

bility of owner—Proof of
loading—If required.

In a prosecution of the
S. 58 of the Inland Steam Vessels Act for carrying passengers in excess of the certificated number, the

INSOLVENCY.

blish the element of *mens rea* as pre-requisite of conviction. The section as worded, gives no option to the Magistrate but to hold the owner and master liable, if the section is contravened. It is not at all unjust to hold the owner liable since it may be presumed that the owner has profited by reason of the passengers carried in excess (*Madan, J.*) RIVER STEAM NAVIGATION CO., LTD. *v.* EMPEROR. 16 Pat. 668=
1937 P.W.N. 813=18 Pat L T. 941=
4 B R. 232=173 I C 249=39 Cr L J 275=
10 R P. 395=A I R 1938 Pat 66.

INSOLVENCY *See also* PRESIDENCY TOWNS

meant by this that the primary burden can be abrogated.
nolment must produce
hope to succeed, but
he other side is of the
truth of his story and
SANGOPAL *v.* UMRAO
430=10 R N. 456=
A.I.R. 1938 Nag. 216.

——Amendment of insolvency petition—Powers of Court—Amendment to cure defect without introducing new debt or new creditor—Permissibility *See* PROVINCIAL INSOLVENCY ACT, S 5
48 L W 263=(1938) 2 M L J 390.

——*Double adjudication—If allowed—Procedure.*

tion, make up its mind
the particular procee-
shall proceed and the
e realized. (*Mya Bu,*
CHUAN SENG & CO *v.*
A.I R. 1938 Rang 475.

——*Insolvency Court—Proof of debt—Judgment debt against insolvent—Jurisdiction of Insolvency Court to refuse to admit—Power to go behind decree against insolvent—Principles—Official Assignee not choosing to*

ain circumst-
It is entitled
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the creditors

——*Jurisdiction—Inclusion of doubtful debt—If affects jurisdiction.*

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debt is one of the debts which would nevertheless have to be taken into consideration in administering the insolvency. (*Wort, Ag. C. J. and Manohar Lall, J.*) RUP

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—*If individually become insolvents.*

If *A*, *B* and *C* are adjudicated insolvents under a firm name, then *A*, *B* and *C* individually become insolvents. If *A* and *B* are carrying on business elsewhere under another firm name, they and the firm are automatically involved in insolvency by their previous adjudic
PREMS

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tion by Official Assignee—Bona fide transactions with such property—Validity.

When the Official Assignee does not intervene, all transactions in respect of property acquired after the insolvency with any person dealing with the insolvent *bona fide* and for value are valid against the Official Assignee. (*Shaw, J.*) SOLOMON DAVID *v.* THE KING. 176 I C 460=11 R R. 65=39 Cr.L J. 754= A.I R. 1938 Rang. 245.

——*Question of title—Duty of Courts—Reference of dispute to Civil Courts.*

Courts should be a little careful in disposing of all matters in insolvency which have the effect of deciding

into Court.

Held, that the application was perfectly competent, and there was no warrant for holding that the receiver in insolvency was not subject to the orders of the Civil Court. It made no difference that
whom the order was to be made
Official Receiver, he was a party
bound by the order of appointment o
his presence. The Official Receiver as
party to the suit, was bound by the orders of the Court. The question of ownership of the amounts collected by the Official Receiver subsequent to the order of appointment of receiver but accrued due before that order should, however, be properly reserved. (*Venkatasubba Rao and Abdur Rahman, JJ.*) SUNDARAM AIYANGAR *v.* OFFICIAL RECEIVER OF TRICHINOPOLY. 1938 M.W.N. 1160=A I R. 1938 Mad 594= (1938) 1 M L J. 543.

shall be paid by yearly instalments and in case of three successive defaults the whole amount shall become payable, the default clause does not take away the right of the creditor to bring suits for instalments as they fall due. If the creditor chooses to get his instalment every year by means of a suit and thus makes it impossible to
end of three years, he
there is nothing in law
r Ahmad, J.) LAKHMI
=10 R. Pesh. 7 (1)= A.I.R. 1938 Pesh. 31.

INSURANCE—*Fire insurance—Policy—Construction—'Opening' in godown—Meaning of—Breach of warranty—Waiver.*

A policy of fire insurance in respect of premises and stock contained in a jute godown was issued subject to certain warranties. One of the clauses of the warranties defined a "Godown" as (*i*) any separate self-contained building situated at a distance of 14 feet or more from any other building, or any separate self-contained building situated less than 14 feet from another building provided that every wall thereof facing any such other building was built without openings of any kind or if

warranty, as such terms were meant to refer only to "openings" permanent in character and of substantial size.

Held, further, that even if there was breach of term

——*Fire—Policy, if constitutes entire contract.*

The contract between the insured and the company is the policy. The policy is a document complete in itself. Where therefore in a fire insurance policy there is a warranty by the assured that no hazardous goods will be stored, he cannot plead that he can store one per

INSURANCE.

cent. of hazardous goods because under the terms on which the insurance company generally does business or according to warranties in force at other times or allowed by other companies one per cent, might have been allowed (*Dalip Singh and Skemp, JJ.*) ABDUL MAJID v. MOTOR UNION INSURANCE CO.

178 I.C. 35 = 40 P.L.R. 549 = A.I.R. 1938 Lah. 168

——*Fire insurance—Company taking possession of salvage and keeping it for month—If estopped from contesting claim of insured.*

When in a fire insurance policy there is no clause relating to salvage, the mere fact that the insurance company takes the salvage and keeps it for about a month does not operate as an estoppel against its pleading that the insured cannot make a claim under the policy. (*Dalip Singh and Skemp, JJ.*) ABDUL MAJID v. MOTOR UNION INSURANCE CO.

178 I.C. 35 = 40 P.L.R. 549 = A.I.R. 1938 Lah. 168

——*Fire insurance—Warranty by assured not to store any hazardous goods—Breach—Building destroyed by*

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destroyed by fire, will not be entitled to any claim against the company (*Dalip Singh and Skemp, JJ.*) ABDUL MAJID v. MOTOR UNION INSURANCE CO

178 I C 35 = 40 P.L.R. 549 = A.I.R. 1938 Lah. 168

——*Life insurance—Mis-statements—False answers by assured to questions by company—Liability of company.*

treated by a medical man for tuberculosis to the knowledge of the assured within a year from the date when the answers were given, and that the assured had consulted medical practitioners for fainting fits and other ailments during the last five years The Chief Medical Officer of the Insurance Company gave evidence that if he had known the facts about the aunt of the assured, he would have made a further investigation and also referred the matter to headquarters before issuing a policy. He said also that if he had known about the fainting fits and upon further investigation had found that these came on suddenly, he would have rejected the proposal.

Held, that the answers given to the company were untrue and fraudulent, in the sense that they were made with knowledge of their falsity, and were designed to induce the company to accept the life of the assured on terms which they would have declined, had they known the truth, and that, therefore, the company was entitled to repudiate their liability under the policy. (*Costello and Panckridge, JJ.*) MANUFACTURERS LIFE INSURANCE CO., LTD v SM. HARIDASI DEBI.

42 C W N. 823

——*Life insurance policy—Days of grace for payment of premium—Computation of—Due date—If to be excluded.*

Where a policy of life assurance gives the assured a period of thirty days as days of grace for payment of premium, the days of grace must be computed from the next day after the due date. The day following the due

——*Life insurance—Policy of—Age of assured admitted on policy—Company, if can dispute admitted age.*

Where according to the rules of a Life Insurance

payable to wife of deceased—If for her own benefit or as trustee for heirs of deceased—Ordinary rule

In the case of policies of life insurance the well-

Lobo, J.) PARMESHWARIBAI v NEHAL CHAND.

173 I C 457 = 32 S L R 138 = 10 R S 212 = A I R 1938 Sind 20

——*Life insurance—Question to assured about 'any other health complaints'—Interpretation.*

The question to the assured by the medical officer of an insurance company about 'any other health complaints' is not intended to refer to simple headaches, cold or slight fever, or similar minor illness Such a question must be read in a fair and commonsense way,

INSURANCE.

and must be construed *contra proferentes*. The duty of the proposer is a duty to disclose and this necessarily depends on the knowledge he possesses. (*Lort Williams, J.*) HEMANTA KUMAR DAS *v.* ALIANTZ INSURANCE COMPANY. 177 I.C. 517 = 11 R C. 253 = A I R. 1938 Cal. 120.

——Policy of—Construction—Insurance of motor vehicle—Clause giving insurer right to rights of insured in latter's name—Insurer to indemnify insured against legal liability death or injury to passengers—Effect resulting in death of passenger—Suit against insurance company—Maintain CONTRACT—THIRD PARTY. 40 Bc

——*Policy—Construction—Reference to prospectus—Permissibility.*

Where a polidy holder is not seeking to rescind or rectify his contract of in-urance contained in the policy issued to him on the ground of fraud or mistake or to recover damages for alleged fraudulent misrepresentation, the prospectus issued by the Insurance Company but not referred to in the policy, cannot legitimately be referred to in order to construe the contract into which he has been induced to enter. (*Derbyshire, C.J. and Panckridge, J.*) SUN LIFE ASSURANCE CO., LTD. OF CANADA *v.* NILRATAN MOOKERJEE. 68 C.L J. 131 = 42 C W.N. 1197 = A.I R. 1938 Cal 693.

——Policy—Money payable to "self or wife" meaning and effect—If creates trust in favour of wife of assured.

40 Bom. L R 52

INTEREST.

See also (1) C. P. CODE, S. 34, O. 34, Rr. 2 to 7.
(2) CONTRACT ACT, S. 73.
(3) DAMAGES.

——*As damages—If and when payable.*

Interest before suit can be paid only if there is either express stipulation to pay interest or if a promise to pay interest can be implied or if the case comes within the provisions of the Interest Act of 1839. It can also be paid in cases where the subject matter could be brought within the jurisdiction of Courts of equity on the principles and conditions in which the Courts of equity in England assume jurisdiction. Such interest could not be awarded by way of damages under the provisions of S. 73 of the Contract Act. (*Mitter and Edgley, JJ.*) NIRUPAMA DEVI *v.* SURABALA DASSI. 42 C.W.N. 1004 = A I.R. 1938 Cal. 618.

——*Award of—Power of Court.*

Interest for the period prior to the date of the suit may be awarded, if there is an agreement for the payment of interest at a fixed rate, or it is payable by the usage of trade having the force of law, or under the provision of any substantive law entitling the plaintiff to recover interest. (*Sir Shadi Lal.*) BENGAL NAGPUR

INTERPRETATION OF STATUTES.

——*Award of—Discretion of Court—Claim to interest on equitable grounds—Delay in suing owing to negligence—Effect.*

A decree based on equitable grounds is always one at the discretion of the Court. A claim for the award of interest on equitable interest should not be allowed when there has been great delay on the part of the plaintiff in

——Delay in suing if ground for refusing interest. *See* SUCCESSION ACT, S. 353. 1938 P.W N 186 = 19 Pat. L T. 202.

——Discretion of Court—Interest *pendente lite* and future interest—Refusal to award—Omission to give reasons—Interference on appeal—If justified. *See* SUCCESSION ACT, S 353. 1938 P W N. 186 = 19 Pat L T. 202.

——Right to—Suit for rent of shop—Damages on interest for period prior to suit—Right to *See* LANDLORD AND TENANT—RENT. 1938 P.W N. 689.

——*When suspended—Test—Conduct of lender.*

Interest may be suspended when failure to pay principal is due to such conduct on the part of the lender as prevents the debtor from paying the principal An injunction obtained by a third party is not *prima facie* such conduct by the lender. (*Weston.*) PHUNDA LAL L. 1938 A M.L J. 48.

.CT (XXXII OF 1839), S. 1, Proviso

to S. 1 applies to a case in which the Court of equity exercises jurisdiction to allow interest. But in order to invoke a rule of equity, it is necessary in the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction. (*Sir Shadi Lal.*) BENGAL NAGPUR RAILWAY CO., LTD. *v.* RUTTANJI RAMJI. 65 I A 66 = I L R (1938) 2 Cal 72 = 1938 A L.J 169 = 47 L.W. 281 = 32 S L R 374 = 1938 O L R 119 = 19 Pat L.T. 125 = 1938 O W N. 261 = 1938 A W.R (P C) 52 = 1938 A L R 167 = 1938 O A 300 = 40 Bom L R. 746 = 4 B R 374 = 10 R P.C. 216 = 42 C W.N 985 = 1938 P W.N. 360 = 67 C L J 153 = (1938) M W N. 646 = 173 I.C. 15 = A.I R 1938 P.C. 67 = (1938) 1 M L J. 640 (P.C).

INTERPRETATION OF STATUTES.

Alterations in law
Alternative construction.
Byelaws
Change in phraseology.
Changing law.
Court fees Act.
Directory or Mandatory.
Duty of Court.
English decision.
General and Special acts.
Harmonious Construction.
Illustration to section.
Jurisdiction of Court.
Literal construction.
Marginal notes and headings
Meaning of words
Object of legislation.
Plain meaning.
Preamble.
Prior state of law.
Provisos.

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and must be construed *contra proferentes*. The duty of the proposer is a duty to disclose and this necessarily depends on the knowledge he possesses. (*Lort Williams, J.*) HEMANTA KUMAR DAS *v.* ALIANTZ INSURANCE COMPANY. 177 I C. 517 = 11 R C. 253 = A.I.R. 193

——Policy of—Construction—Insurance

... n respect of death or injury to passengers—Effect of—Accident resulting in death of passenger—Suit for damages against insurance company—Maintainability *See* CONTRACT—THIRD PARTY. 40 Bom L R. 155.

——*Policy—Construction—Reference to prospectus—Permissibility*

... referred to in the policy, cannot legitimately be referred to in order to construe the contract into which he has been induced to enter. (*Derbyshire, C.J. and Panckridge, J.*) SUN LIFE ASSURANCE CO., LTD. OF CANADA *v.* NILRATAN MOOKERJEE. 68 C.L J. 131 = 42 C.W.N. 1197 =

INTEREST.

See also (1) C. P. CODE, S. 34, O. 34, Rr. 2 to 7.
(2) CONTRACT ACT, S. 73.
(3) DAMAGES.

——*As damages—If and whe*...

Interest before suit can be paid ... express stipulation to pay interest ... interest can be implied or if the ... provisions of the Interest Act o... paid in cases where the subject m... within the jurisdiction of Courts ... ciples and conditions in which t... England assume jurisdiction. ... be awarded by way of damages ... S. 73 of the Contract Act. (*Mitter and Edgley, JJ.*) NIRUPAMA DEVI *v.* SURABALA DASSI. 42 C.W.N. 1004 = A I.R. 1938 Cal. 618.

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Interest for the period prior to the date of the suit may be awarded, if there is an agreement for the payment of interest at a fixed rate, or it is payable by the usage of trade having the force of law, or under the provision of any substantive law entitling the plaintiff to ...

A.I.R. 1938 P C. 67 = (1938) 1 M.L.J. 640 (P.C.).

——*Award of—Discretion of Court—Claim to interest on equitable grounds—Delay in suing owing to negligence—Effect.*

A decree based on equitable grounds is always one at the discretion of the Court. A claim for the award of ...

JJ.) RADHE KISHUN *v.* ADITYA NARAIN SINGH. I.L.R (1938) A. 243 = 174 I.C. 499 = 1938 A W R. (H.C.) 66 = 1938 R D. 238 = 1938 A L R 295 = 10 R.A. 593 = 1938 A.L J. 1 = A I.R. 1938 A. 151.

——Delay in suing if ground for refusing interest. *See* SUCCESSION ACT, S. 353. ... N 186 = 19 Pat. L T. 202.

—Interest *pendente lite* and ... to award—Omission to give ... appeal—If justified. *See* ...

1938 P.W N. 186 = 19 Pat L T. 202.

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Interest may be suspended when failure to pay principal is due to such conduct on the part of the lender as ... the debtor from paying the principal. An ... n obtained by a third party is not *prima facie* ... duct by the lender. (*Weston*) PHUNDA LAL ... 1938 A M L J. 48.

... (9), S. 1, Proviso

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INTERPRETATION OF STATUTES.

40 Bom L.R. [illegible]

——*Jurisdiction* [illegible] *executive authority* [illegible] *order—Validity* [illegible] *consider.*

Where an Act of Parliament [illegible] ... power to make an order [illegible] ... It is sought to impose a penalty [illegible] made by the authority [illegible] hearing the charge to consider [illegible] properly made and to [illegible] that the authority has acted [illegible] ...vely or oppressively; (2) the [illegible] ... statute have been ... [illegible] ..., *Wadia and Wa*[illegible]

...AKMAHOMED AHMA[illegible]

I.L.R. ([illegible]

40 Bom L.R. 483 [illegible]

——*Jurisdiction of C*[illegible]

[illegible]

Statutes ousting [illegible] ... very strictly construed. ... presumed to have p[illegible] ... have been taken away ex[illegible] ... be presumed th[illegible] ... what[illegible] ... words or by nece[illegible] ...

[illegible]

to give out what he considers to be the primary meaning of the language used. A Judge must always consider the effect of any construction which he is asked to put on an Act of Parliament, and if he comes to the conclusion that a particular construction leads to a result which he considers irrational or unfair, he is entitled, and indeed bound, to assume that the Legislature did not intend such a construction to be adopted, and to try to

Act.

——*Duty of Court—Reference to definitions in other statutes—Permissibility.*

It is most dangerous to attempt to interpret a statute by using definitions of words given in other statutes. The duty of the Court is to interpret the definitions in the statute and apply them as exactly as possible. (*Reilly, C.J and Abdul Ghani, J.*) SUPERINTENDENT, NANDYDRUG MINES, LTD. *v* LUCAS

43 Mys H.C.R. 132=15 Mys.L J. 563

——*English decision interpreting English Act—Value of.*

An English case interpreting an Act of Parliament is no guide for the interpretation of a section of an Indian Provincial statute, especially where the wordings in the two Acts are different. (*Davis, J. C. and Lobo, J.*) TARACHAND PRIBHDAS *v.* EMPEROR.

32 S.L R. 622=175 I.C 834=11 R S 7=39 Cr L J. 668=A.I.R. 1938 Sind 116

——*English rules of construction of wills and deeds—Rule of construction of foreign statute—Applicability in Mysore.*

It would not be at all proper for the Courts in Mysore to feel themselves bound, in interpreting a statutory enactment of that state, by artificial rules of construc-

statute of Mysore. (*Reilly, C J. and Abdul Ghani, J.*) CHICKANARASAPPA *v* HONNURAMMA.

43 Mys H C.R. 181=16 Mys L J. 167.

——*General and special Acts—Conflict between—Priority—Rule.*

It is a clear principle of law that when there is a conflict between a special statute dealing with a special kind

r. TULJARAMRAO. 177 I C. 593=11 R B. 101=40 Bom L R 461=A I.R. 1938 Bom. 372.

——*Harmonious construction.*

Law must be interpreted in a way which will not render one of its provisions entirely nugatory. (*Bose, J.*)

RAMPRASAD JAGBANDHOO *v.* ANANDI BRINDAWAN RAWAT. 174 I C. 374=10 R N. 377=A.I.R. 1938 Nag. 160.

——*Harmonious construction — Ambiguity—Construction consonant to other Acts.*

In construing a statute one should endeavour to give it a meaning, in all cases of ambiguity, which will make it consonant to rather than in ... other

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... have the effect of modifying the language of the section

42 C.W.N. 985=1938 P W.N 360=67 C.L J. 153=1938 M.W.N 646=173 I C. 15=A.I.R. 1938 P.C. 67=(1938) 1 M L.J. 640 (P.C.).

——*Judicial pronouncements—Words construed by Courts—Re-enactment in substantial terms—Effect of—Inference.*

According to a well-known rule for the interpretation of statutes, when a provision of law has been given a particular meaning by the Courts, and it is re enacted or left substantially unaltered after amendment, it may be assumed that the Legislature has accepted the view taken by the Courts. (*Beaumont, C.J., Broomfield and Norman, JJ.*) EMPEROR *v.* SOMABHAI GOVINDBHAI.

40 Bom L R. 1082=A.I R 1938 Bom. 484 (F B.).

——*Jurisdiction of Court—Act giving power to executive authority to make special orders—Breach of order—Validity of order—Power and duty of Court to consider.*

Where an Act of Parliament confers upon an authority power to make an order in certain conditions, and it is sought to impose a penalty for breach of an order made by the authority, it is incumbent upon the Court hearing the charge to consider whether the order was properly made and to be satisfied on two points: (1) that the authority has acted reasonably and not caprici- ... onditions imposed by ... (*Beaumont, C. J.,* ... *JJ.*) EMPEROR *v.*

I.L.R. (1938) Bom 403=176 I C 839=11 R B 53=39 Cr L J. 792=40 Bom L.R. 483=A I.R 1938 Bom. 338 (F B.).

——*Jurisdiction of Civil Court—Act ousting—Strict construction.*

Statutes ousting jurisdiction of the Civil Courts must be very strictly construed. The Civil Courts must be ... they ... atute. ... alter ... er by ... *C J.* ... JMAL ... 368= ... A.I.R. 1938 Nag. 80

——*Jurisdiction of Civil Court—Presumption in favour of—When excluded or taken away.*

The general principle of law is that every presumption shall be made in favour of the jurisdiction of a Civil Court and that it shall not be taken away except

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by express words or by necessary implication. (*Venkata subba Rao and Abdur Rahman, JJ.*) VEERANNA v. MOCHARAMMA. 47 L W. 42=1938 M.W.N. 284= A.I.R. 1938 Mad 505=(1938) 1 M.L J. 406.

——*Literal construction—If can prevail against clear intention of Legislature.*

It is a well recognised canon of construction that the more literal construction ought not to prevail if it is opposed to the intentions of the Legislature as apparent from the statute, and if the words are sufficiently flexible to admit of some other construction by which the intention will be better appreciated. (*Rup Aand Bilaram, Ag J C. Dadiba C. Mehta and Lobo, A.J.Cs.*) BACHOO KANDERO v EMPEROR. 32 S L.R. 185=172 I C. 968=10 R S. 188= 39 Cr L J. 239=A.I.R. 1938 Sind 1

——*Literal construction—Rule as to—Limits of.*

It is a cardinal rule of construction that a section of a statute must be construed literally unless (1) the section itself is repugnant to the general purpose of the Act, and (2) there is some other section which cuts down its meaning. (*Rupchand Bilaram, Ag J C. and Lobo A J C.*) MINHO v. EMPEROR. 32 S L R 129= 173 I C 325=10 R S 201= 39 Cr.L J. 294=A.I.R. 1938 Sind 9.

——*Marginal notes and headings—Reference to.*

It is undoubtedly permissible to the Court to refer to

[illegible]

by any arrangement made by the authors of the statute. (*Rangnekar and Sen, JJ.*) RAMKRISHNA v. BAPURAO. 175 I.C. 518=10 R B 564=40 Bom L R 390= A I R 1938 Bom 284.

——*Marginal note—Value of*

Marginal note is of no value in interpreting a section (*Rupchand Bilaram, Ag J C. and Lobo, A J C*) MINHO v. EMPEROR. 32 S L R 129=173 I C. 325= 10 R S. 201=39 Cr L J. 294=A I.R. 1938 Sind 9

——*Meaning of words—Construction placed by Courts—Re enactment in same terms—Inference.*

It is a well established principle to be applied in the construction of statutes that where a certain construction has been placed by the Courts upon words in an Act, and that Act is subsequently re-enacted in a later Act which uses the same words, the Legislature must be taken to have known of the construction placed upon the

[illegible]

174 I C 773=10 R B 499=40 Bom L R 324= A I R 1938 Bom 231 (F B.).

——*Meaning of words—'Privilege' and 'right'.*

Where the word 'privilege' is coupled with 'right' in a statute it must be held to have a well [illegible] It does not mean some advantage [illegible] reason of existing procedure a party m[illegible] in fact to possess, but may be defined a[illegible] age or immunity in law enjoyed by a p[illegible] persons beyond the common advantages [illegible] word must be construed in [illegible] legal meaning when it is emplo[illegible] as having a loose or figurative [illegible] *Mya Bu and Dunkley, JJ.*) [illegible] TYAR v VALLIAPPA CHETTYAR. 1938 Rang L.R. 176=175 I C 275=10 R.R. 474= A.I R 1938 Rang. 130 (F B.)

INTERPRETATION OF STATUTES.

——*Object of legislation—Reference to—Duty to have regard to terms of limitation—Duty laid down by Act found impossible of performance—Duty of Court in construing.*

A statute should be construed not merely with reference to its language, but also its subject matter and object, and in construing its provisions regard must be had to the express terms of any limitation contained in it. If in the interpretation the Court finds that a duty which is expected to be performed is either impossible of performance and beyond the normal capacity of a reasonable or prudent man, or when performance in the strictest language of the enactment is either idle or impossible, then the enactment must be understood as dispensing with the strict performance of that duty. (*Wassoodew and Somjee, JJ.*) EMPEROR v. GANPAT LAXMAN. 177 I.C. 665=11 R B 112= 39 Cr L.J. 933=40 Bom L.R 820= A I R 1938 Bom 427.

——Plain meaning—Departure from—When justified *See* U. P. AGRICULTURISTS' RELIEF ACT, S. 5 (1). A.I R. 1938 All. 456.

——*Preamble—Effect of.*

The preamble does not govern plain provisions in the body of the Act (*Leach, C. J., Varadachariar and Mockett, JJ.*) RANGAREDDI v. DASARADHARAMI REDDI I.L R (1938) Mad 841=175 I C 401= 10 R M 769=1938 M.W.N. 369=47 L W. 498= A.I.R. 1938 Mad 441=(1938) 1 M.L J. 552 (F B.).

——*Preamble—Reference to—Ambiguity.*

It is no doubt a principle of construction that the preamble of an Act can be invoked for removing an ambiguity in an Act, but it is equally a well-settled principle that the preamble cannot be invoked for creating an ambiguity in the Act (*Mitter, J*) JNANENDRANATH NANDA v JADUNATH BANERJI. I.L R (1938) 1 Cal 626=42 C W N 81= A I R 1938 Cal. 211.

——*Preamble—Reference to—Limits.*

The preamble may be consulted to solve any ambiguity whenever the enacting part is open to doubt; but where the enacting part is clear, the preamble cannot operate to restrict that meaning (*Pollock, J*) BALKISAN v. MST. JATNABAI 177 I.C 531=11 R N. 146= 1938 N L J 168=A I R 1938 Nag 298.

——*Prior state of the law—Object of the legislature—Reference to*

It is permissible to look into the state of the law at [illegible] Amending Act is passed and the [illegible]gislature had in view in introducing [illegible] construing a statute provided it is [illegible]g that the language of the statute [illegible] strained by any attempt to bring it in with the supposed intention of the Legislature. (*Nasim Ali and Mukherjea JJ.*) MAHAMMED HUSHEN v JAMINI NATH I L R (1938) 1 Cal 607= 176 I C 41=11 R C. 25=42 C W N 38= A I R 1938 Cal 97

[illegible] of the pre[illegible] very doubts [illegible]ught to settle. [illegible]ut purports to alter the order of succession among Hindu heirs, (the Hindu Law of Inheritance Amendment Act), it [illegible] desirable to see who were, before the Act, heirs. (*St*

INTERPRETATION OF STATUTES.

to give out what he considers to be the primary meaning of the language used. A Judge must always consider the effect of any construction which he is asked to put on an Act of Parliament, and if he comes to the conclu

find some more rational meaning to which the words are sensible (*Beaumont, C.J., Broomfield and Norman, JJ.*)

40 B

——

Act.

If the provisions of law made by the Legislature, under their plain wording, apply to a particular case, Courts cannot avoid giving effect to them merely because the Legislature did not contemplate or have in mind such a case when it drew up the Act in question. (*Horwill, J.*) KRISHNAN NAYAR *v.* MOIDEEN.

175 I.C. 220=10 R M. 757=
1937 M W N 1268=A.I R 1938 Mad. 263

——*Duty of Court—Reference to definitions in other statutes—Permissibility.*

It is most dangerous to attempt to interpret a statute by using definitions of words given in other statutes. The duty of the Court is to interpret the definitions in the statute and apply them as exactly as possible. (*Reilly, C.J. and Abdul Ghani, J.*) SUPERINTENDENT, NANDYDRUG MINES, LTD. *v.* LUCAS.

43 Mys H.C R 132=15 Mys L J. 563.

——*English decision interpreting English Act—Value of.*

An English case interpreting an Act of Parliament is no guide for the interpretation of a section of an Indian Provincial statute, especially where the wordings in the two Acts are different. (*Davis, J. C. and Lobo, J.*) TARACHAND PRIBHDAS *v.* EMPEROR.

32 S.L R 622=175 I.C. 834=
11 R S. 7=39 Cr L J. 668=
A I.R. 1938 Sind 116

——*English rules of construction of wills and deeds—Rule of construction of foreign statute—Applicability in Mysore.*

It would not
to feel themsel
enactment of th
tion developed in
pretation of deeds and wills executed by private persons. It is also unsafe to take a rule for the interpretation of even of a statute in another country and to apply to a statute of Mysore. (*Reilly, C J and Abdul Ghani, J.*) CHICKANARASAPPA *v.* HONNURAMMA.

43 Mys.H C.R. 181=16 Mys.L J. 167

——*General and special Acts—Conflict between—Priority—Rule*

It is a clear principle of law that when there is a conflict between a special statute dealing with a special kind of property and a general statute enacted subsequently and dealing with all kinds of property, it is by the former that the rights of the parties must be governed with regard to the special kind of property. The provisions of the special Act must prevail against those of the later Act which is a general one, on the well recog-

INTERPRETATION OF STATUTES.

RAMPRASAD JAGBANDHOO *v.* ANANDI BRINDAWAN RAWAT. 174 I C. 374=10 R N. 377=
A.I.R. 1938 Nag. 180.

——*Harmonious construction — Ambiguity—Con-*

Acts. (*Stone, C. J., Bose and Clarke, JJ.*) MOTIRAM SITARAM *v.* DAULAT ANYAJI

38 N.L.J. 327 (F.B.).

can modify se tion.

statute cannot have the effect of modifying the language of the section which alone forms the enactment. (*Sir Shadi Lal.*) BENGAL NAGPUR RAILWAY CO LTD. *v.* RUTTANJI RAMJI. 65 I A 66=I.L R. (1938) 2 Cal 72=
32 S.L R. 374=1938 A L J. 169=47 L W. 281=
1938 O.L R 119=19 Pat L T 125=
1938 O.W.N. 261=1938 A.W R (P.C.)52=
1938 A L R. 167=1938 O A. 300=
40 Bom L R 746=4 B R. 374=10 R.P.C. 216=
42 C W.N. 985=1938 P W.N 360=67 C.L J. 153=
1938 M.W.N 646=173 I C. 15=
A.I.R. 1938 P C. 67=(1938) 1 M L.J. 640 (P.C.).

——*Judicial pronouncements—Words construed by Courts—Re enactment in substantial terms—Effect of—Inference.*

According to a well-known rule for the interpretation of statutes, when a provision of law has been given a particular meaning by the Courts, and it is re-enacted or left substantially unaltered after amendment, it may be assumed that the Legislature has accepted the view taken by the Courts. (*Beaumont, C J., Broomfield and Norman, JJ.*) EMPEROR *v.* SOMABHAI GOVINDBHAI.

40 Bom L R. 1082=A.I R. 1938 Bom 481 (F B.).

——*Jurisdiction of Court—Act giving power to executive authority to make special orders—Breach of order—Validity of order—Power and duty of Court to consider.*

Where an Act of Parliament confers upon an authority power to make an order in certain conditions, and it is sought to impose a penalty for breach of an order

the statute have been observed. (*Beaumont, C. J., Rangnekar, Wadia and Wassoodew, JJ.*) EMPEROR *v.* YARMAHOMED AHMADKHAN.

I.L.R. (1938) Bom. 403=176 I C. 839=
11 R B. 53=39 Cr L J. 792=
40 Bom L R. 483=A I.R 1938 Bom. 338 (F B.).

——*Jurisdiction of Civil Court—Act ousting—Strict construction.*

Statutes ousting jurisdiction of the Civil Courts must be very strictly construed. The Civil Courts must be presumed to have powers except to the extent that they have been taken away expressly by some other statute. It must be presumed that the Legislature does not alter the law beyond what it explicitly declares either by express words or by necessary implication. (*Stone, C.J. and Niyogi, J.*) RAMKARAN BONDRU *v.* SURAJMAL

8) Nag 208=
1938 Nag. 80

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by express words or by necessary implication. (*Venkata subba Rao and Abdur Rahman, JJ.*) VEERANNA v. MOCHARAMMA. 47 L W 42=1938 M.W.N. 284=A.I.R. 1938 Mad 505=(1938) 1 M L J 406.

——*Literal construction—If ... clear intention of Legislature.*

It is a well recognised canon of ... more literal construction ought not to prevail ... opposed to the intentions of the Legislature as apparent from the statute, and if the words are sufficiently flexible to admit of some other construction by which the intention will be better appreciated. (*Rupchand Bilaram, Ag J C. Dadiba C. Mehta and Lobo, A.J Cs.*) BACHOO KANDERO v. EMPEROR. 32 S.L.R 185=172 I C. 968=10 R S. 188=39 Cr L J. 239=A.I.R. 1938 Sind 1

——*Literal construction—Rule as to—Limits of.*

It is a cardinal rule of construction that a section of a statute must be construed literally unless (1) the section itself is repugnant to the general purpose of the Act, and (2) there is some other section which cuts down its meaning. (*Rupchand Bilaram, Ag J.C. and Lobo A J C.*) MINHO v. EMPEROR 32 S L R 129=173 I.C. 325=10 R.S 201=39 Cr.L.J. 294=A.I.R. 1938 Sind 9

——*Marginal notes and headings—Reference to.*

It is undoubtedly permissible to the Court to refer to marginal notes and headings as aids in interpretation of statutes. But where a section of the statute is plain on the express language of it, the plain meaning of that section should not be curtailed by the marginal note or by any arrangement made by the authors of the statute (*Rangnekar and Sen, JJ.*) ... 175 I.C. 518=10 R B ...

——*Marginal note—Value of*

Marginal note is of no value in interpreting a section (*Rupchand Bilaram, Ag. J C. and Lobo A J C.*) MINHO v. EMPEROR. 32 S L R 129=173 I C. 325= ...

has been placed by the Courts upon words in an Act, and that Act is subsequently re-enacted in a later Act which uses the same words, the Legislature must be taken to have known of the construction placed upon the ...

... 174 I C 773=10 R B 499=40 Bom L R 324=A I R. 1938 Bom 231 (F B).

——*Meaning of words—'Privilege' and 'right'*

Where the word 'privilege' is coupled with 'right' in a statute it must be held to have a well ... It does not mean some advantage o... reason of existing procedure a party m... in fact to possess, but may be defined a... age or immunity in law enjoyed by a p... persons beyond the common advantages ...

... TYAR v. VALLIAPPA CHETTYAR. 1938 Rang.L.R. 176=175 I C 275=10 R R 474=A.I.R. 1938 Rang. 130 (F.B.)

INTERPRETATION OF STATUTES.

——*Object of legislation—Reference to—Duty to have regard to terms of limitation—Duty laid down by Act found impossible of performance—Duty of Court in construing.*

... it. If in the interpretation the Court finds that a duty which is expected to be performed is either impossible of performance and beyond the normal capacity of a reasonable or prudent man, or when performance in the strictest language of the enactment is either idle or impossible, then the enactment must be understood as dispensing with the strict performance of that duty. (*Wassoodew and Sanjee, JJ.*) EMPEROR v. GANPAT LAXMAN. 177 I.C. 665=11 R B 112=39 Cr.L J. 933=40 Bom L.R 820=A I R 1938 Bom 427.

——Plain meaning—Departure from—When justified. *See* U. P. AGRICULTURISTS' RELIEF ACT, S. 5 (1). A.I R. 1938 All. 456.

——*Preamble—Effect of.*

The preamble does not govern plain provisions in the body of the Act. (*Leach, C. J., Varadachariar and Mockett, JJ.*) RANGAREDDI v. DASARADHARAMI REDDI I L R (1938) Mad 841=175 I C 401=10 R M 769=1938 M.W.N. 369=47 L W. 498=A.I R. 1938 Mad 441=(1938) 1 M.L J. 552 (F B).

——*Preamble—Reference to—Ambiguity.*

It is no doubt a principle of construction that the preamble of an Act can be invoked for removing an ...

... I L R. (1938) 1 Cal 626=42 C W N 81=A I R 1938 Cal. 211.

——*Preamble—Reference to—Limits.*

... 1938 N L J 168=A I R 1938 Nag 298.

——*Prior state of the law—Object of the legislature—Reference to.*

It is permissible to look into the state of the law at ... Amending Act is passed and the ... gislature had in view in introducing ... construing a statute provided it is ... g that the language of the statute ... strained by any attempt to bring it in with the supposed intention of the Legislature. (*Nasim Ali and Mukherjea JJ*) MAHAMMED HUSHEN v JAMINI NATH I L R (1938) 1 Cal 607=176 I C 41=11 R C. 25=42 C W N 38=A I R 1938 Cal 97

... of the pre... very doubts ... ought to settle. ... purports to alter the order of succession among Hindu heirs, (the Hindu Law of Inheritance Amendment Act), it is desirable to see who were, before the Act, heirs. (*Si*

INTERPRETATION OF STATUTES.

scope of main provisions.

A proviso in a statute is properly used to indicate that a general provision to which it relates does not apply to instances which the proviso cuts out of that general provision. A proviso is also used at times to quiet misapprehensions that rights have been affected by the provisions to which the proviso relates in a way unintended by the legislature. On the other hand it is quite illegitimate to interpret a proviso as extending the content of the provisions to which it relates. If there is an ambiguity in the general provision to which the proviso relates, the proviso may sometimes be used to help the Court to determine which of the two ambiguous interpretations of the main provision is correct. (*Reilley, C.J. and Nagesvara Iyer, J.*) VENKATAPATHIAH *v.* SARASWATHAMMA.

43 Mys.H.C.R. 361 = 16 Mys L.J. 273.

——Reference to former Act —Permissibility. *See* AGRA TENANCY ACT (1926)—INTERPRETATION.

A I.R. 1938 All 396 (F.B.).

——*Reference to other statutes.*

It is always dangerous to seek to construe one statute by reference to words of another. (*Lord Wright.*)

1938 M W.N. 487 = A.I R. 1938 P C. 152 = (1938) 1 M L J. 834 (P.C.).

——*Repeal by implication.*

An assumption of repeal by implication is not favoured. (*Niyogi, JJ.*) SHRIDHAR *v.* GANESH.

1938 N L.J. 133.

——*Repugnancy between two provisions of law—What amounts to.*

In order that two provisions of law may be called repugnant to one another they should be so contradictory that it would be impossible to carry out both of them: in other words, if one says "do" and the other says "do not." (*Mahomed Noor and Chatterji, JJ.*) VISWANATH NARAYAN SINGH *v.* HARIHAR GIR.

178 I.C. 279 = 5 B R. 73 = 19 Pat.L T. 760 = 1938 P.W N. 765.

——*Restrictive legislation—Act restricting existing*

v. BHANU. 1938 N.L J. 15

——*Retrospective effect.*

A statute which deals with substantive rights would not ordinarily be construed as retrospective in its operation. It would operate only on facts which came into existence after the statute is passed, unless a contrary intention can be gathered either from express words, or by necessary implication. (*Nasim Ali and Mukherjea JJ.*) MAHAMMED HUSHEN *v.* JAMINI NATH.

I.L.R (1938) 1 Cal 607 = 176 I C 41 = 11 R.C. 25 = 42 C W N. 38 = A I R. 1938 Cal 97.

——*Retrospective operation—Acts impairing contracts and affecting vested rights—Duty and practice of Courts.*

JAINS.

...ect of impairing contracts and ...e strictly construed, and in the ...t must lean against giving re... ...r provisions. Unless there is ... context or objects of the Act showing a contrary intention, the duty and practice of Courts of justice is to presume that the Legislature enacts prospectively and not retrospectively. (*Stone, C.J. and Digby, J.*) BHAGWANTRAO *v.* DAMODAR.

I L R. (1938) Nag. 91 = 20 N.L J. 285 = A.I R. 1938 Nag. 112.

——*Retrospective operation—Amending Act.*

Where it is clear that an amending Act is more than declaratory, it cannot be given retrospective effect. (*Leach, C. J., Varadachariar and Mockett, JJ.*) RANGAREDDI *v.* DASARADHARAMI REDDI.

I L R. (1938) Mad 841 = 175 I.C. 401 = 10 R M. 769 = 1938 M.W N. 369 = 47 L.W. 498 = A I.R. 1938 Mad. 441 = (1938) 1 M.L J. 552 (F B.).

——Retrospective operation—Clear words—Necessity. *See* T. P. ACT, S. 92.

A I.R. 1938 Rang. 306 (F.B.).

——*Retrospective operation—Rule.*

——*Retrospective operation—Rule as to.*

The general rule of law is that an Act has no retrospective effect unless it is so specifically provided but there are certain exceptions; for instance, declaratory statutes passed to remedy defects in form have retrospective effect. Whenever the intention is clear that the Act should have a retrospective operation, it must unquestionably be so construed, even though the consequences may appear unjust and hard. (*Thomas, C. J., Zia-ul-Hasan and Hamilton, JJ.*) B. KUNDAN LAL *v.* FAQIR BAKSH.

174 I C 714 = 10 R O. 264 = 1938 O.W.N. 401 = 1938 O.A. 270 = A I R. 1938 Oudh 127 (F.B.).

——*Retrospective operation—Test to decide.*

The canons of construction which are laid down in order to decide whether an Act is retrospective or prospective are: (1) There is no presumption that the statute which takes away any existing right is intended to apply to a state of facts which came into existence before its commencement. (2) When the effect of the statute would be to make a transfer valid which was previously invalid, to make an instrument, which had no effect at all and from which the party had liberty to depart as long as he pleased, binding, the *prima facie* ...ruction of the Act is that it is not to be retrospec... (3) If it is a necessary implication from the lan...e employed that the Legislature intended a parti... section to have a retrospective operation, the Courts will give it such an operation because it is obviously competent for the Legislature if it pleases in its wisdom to make the provisions of an Act retrospective. (4) But if, on the other hand, the language employed by the Legislature is ambiguous, or not clear and explicit, the Court must not give a construction to the new Act which would take away vested rights. In other words, should treat the Act as prospective. (*Wort and Manohar Lall, JJ.*) JAGDAMBA PRASAD *v.* ANADI NATH.

17 Pat. 460 = 176 I C 273 = 11 R P. 59 = 19 Pat L.T. 594 = 4 B R. 697 = A.I.R. 1938 Pat. 337.

JAINS. *See* CUSTOM AND HINDU LAW.

Adoption

Applicability.

Succession etc.

JAMMU AND KASHMIR CIVIL PROCEDURE CODE, Ss. 72 and 60—*Lands held by Assamis and occupancy tenants—Temporary alienation of—Permissibility.*

Lands held by Assam ... exempt from attachment ... C. P. Code, and a tempor... 72 of that Code is, therefore, not permissible (*Kichlu and Wazir, JJ.*) SANTAMAL DUNICHAND *v.* AHMED ALI. 40 P.L.R. J. & K. 53

JAMMU AND KASHMIR COURT OF WARDS REGULATION, Ss. 15 and 16—*Contract by ward—Subsequent ratification—Valid...*

A contract by a person ... wardship is void *ab initio* an... ratified by him subsequently. (... LAJPAT RAI ANAND *v.* LACHMAN SINGH JI. 40 P.L.R. J. & K. 34.

... Where a person marries a girl under 14 years of age it is no defence that he did n... under 14 years or that from her a... that she was of greater age (*K*... STATE *v.* AHED LONE.

JAMMU AND KASHMIR MOTOR VEHICLE REGULATION, S. 16—*Offence of overloading—Sentence of fine—Considerations.*

In imposing a fine on a lorry driver for the offence of ...

a widow or the control of such alienations by reversioners. The reversioners may challenge the alienation by a widow if they are allowed to do so by their personal law or by any custom. Where, therefore, the parties are Hindus, the reversioner could challenge the right of the widow to alienate her occupancy rights in the land provided the alienation was without consideration and legal necessity (*Kichlu and Wazir, JJ.*) NAND SINGH *v.* MST. ACHHRI. 40 P.L.R. J. & K. 44.

JEWISH LAW—Kimli—*Doctrine of—Applicability in British India.*

... stop the inquiry at a certain point and to shut out evi...

... deceased father cannot be applied to the case of a will made by a deceased when the property dealt with is in-

JOINT TORT-FEASORS.

capable of delivery to the donees or legatees. (*Beaumont, C.J. and Wadia, J.*) MESSA *v.* MESSA. ... R B 121= 8 Bom. 394.

... *omiciled in Aden—Will in form of gift—Gift inter vivos of property including assets held in subsisting partnership with others to operate after death—Validity—Delivery of possession—Necessity*—Kinyan—*Recital in will as to performance of—Sufficiency.*

A Jew domiciled in Aden is incompetent to make a ... with others, in different shares amongst certain legatees —what the testator purports to do by such a will is to ... delivery of possession was performed has to be accepted as conclusive, but that would not make the will valid. Further such a will, to be effective, must be delivered to ...

... scheme of the Act and the rules, be regarded as enacted for the benefit of the assessee. Omission by the Water Board to issue the notice under S. 58 (*b*) cannot render the asses... the section ... or imperati... RIA WATER ... 1938 P W N 635=19 Pat. L T 833= A I R. 1938 Pat 539.

——*See also* (1) CONTRIBUTION.
(2) TORTS

... *abs-inst* ... a ... ates ... as a bar ... joint tort feasor. To be joint tort feasors within the rule, the cause of ...

... performance of some term of a contract, that fact does not of itself render liable the person for whose benefit

JUDICIAL OFFICERS.

such performance enures, of the permance of that term is undertaken by an independent contractor who acts as such and not as a servant or agent of the other party to the contract, the liability attaches to such independent contractor, but if such other party retains in his own hands the control

their acts are their acts so as to make them joint tort-feasors.

B. J. Wadia, J.—In order to constitute two persons joint wrongdoers they must act together in furtherance of a common design, or one of them must aid, counsel or direct the other, or one must be the servant or agent of the other, or one man must have allowed another to meddle negligently in an act for which the former was really answerable. But it is a well-known rule that not all concurrent wrongdoing is necessarily joint. When the wrongful acts are separate and independent and yet combine to cause the same damage, there is a separate *injuria* in respect of each wrongful act, though they produce the same *damnum*, and each of the two persons who has committed an *injuria* is independently liable on that *injuria* as on a distinct cause of action. The mere fact that both of them act in reference to the same subject matter cannot make them joint tort feasors, if it is not shown that they commit the acts in furtherance of a common design between them to commit the tortious act. (*Beaumont, C. J and Wadia J.*) CALICO PRINTERS ASSOCIATION v MITSUBISHI SHOJI KAISHA, LTD. 177 I C. 913 = 40 Bom L R 661 = A I.R. 1938 Bom 413.

JUDICIAL OFFICERS—*Duty of—Need for absolute impartial position—Principles—Judicial Officer debtor of one of the parties—Competency to deal with matter between parties without disclosing same.*

Persons exercising
entirely impartial posit
interest, pecuniary or c
the litigation, and they
that any bias in favour of one side or the other can be imputed to him. Actual bias need not be proved, if the relationship is such that bias may seem likely. It is impossible to say that a debtor is not, from the nature

the fact at the time.

Held that the officer was not competent to entertain the taxation and the taxation was therefore bad *ab initio* (*Beaumont, C.J.*) SHAMDASANI v. CENTRAL BANK OF INDIA, LTD. 177 I C 934 = 40 Bom L R 904 = A.I R. 1939 Bom. 431.

JUDICIAL OFFICERS' PROTECTION ACT (XVIII OF 1850), S. 1—*Protection under—Limits—Jurisdiction—Meaning of—Order for search by Magistrate—Search carried out by police.*

By S 1 of the Judicial Officers' Protection Act, a judicial officer is protected if he made the order in the discharge of his judicial duties whether or not within the limits of his jurisdiction, provided that he at the time, in good faith, believed himself to have jurisdiction to pass the order. 'Jurisdiction' in the section is to be taken in the sense of authority or power to act in the matter and not in the sense of authority or power to act in a particular manner Any person executing such an order within the 'jurisdiction' of a judicial officer is equally

even though the prosecution with reference to which the order was made, ultimately failed. (*Nasim Ali and Mukherjea, JJ.*) SEWALRAM AGARWALLA v. ABDUL MAJID. I.L R. (1938) 1 Cal. 581 = 42 C.W.N. 50 = A.I.R. 1938 Cal. 177.

JURISDICTION.

See also C. P. CODE, S. 9.

Absence of.
Cause of action.
Civil Court
Civil and Revenue Courts.
Determination.
Forum to set aside decree without Jurisdiction.
Non resident foreigners.
Pecuniary jurisdiction.
Place of suing
Revenue Court.
Special tribunal.

——*Absence of—Absence and inactivity of party—Effect of.*

Even the consent of parties cannot confer jurisdiction where it does not exist, much less would be absence of a party or his inactivity be sufficient to legalize what is *ab initio* illegal. (*Addison and Din Mohammad, JJ.*) INTIZAMIA COMMITTEE v. CENTRAL BANK OF INDIA LTD. A.I.R. 1938 Lah. 129.

——Cause of action—Promissory note payable on

or

),

CL. 12. 40 Bom.L R. 252.

——*Civil Court—Acts of special tribunal created by special Act for special purpose—Power to question.*

The Civil Court has power to inquire into the ques-

ing its powers under the statute of its creation must be vigilant to see that it does not exceed its jurisdiction and thus encroach on the province of the Civil Court's jurisdiction. The only authority that is competent to decide whether a special tribunal has acted strictly within the limits of its authority or not is the Civil Court. (*Niyogi, J.*) TIKA RAM v. GANPAT SAHAI 1938 N L J 17 = A.I.R. 1938 Nag 373.

——*Civil Court—Bar of suit—Acts of executive authority in exercise or under colour of statutory powers—Right of subject to resort to Civil Court for redress.*

When executive authorities in the exercise or under colour of statutory powers interfere with the person or property of the subject, improperly or in excess of the

limits authorised by law, the subject has the right to resort to the Civil Court, unless its jurisdiction has been taken away by express words or by clear implication. (*Varadachariar and Pandrang Row, JJ.*) MASK & CO. v. SECRETARY OF STATE. 1938 M.W N. 341= 47 L.W. 505=A I.R. 1938 Mad. 608.

——*Civil Court—Expulsion of member from club—Interference—Grounds—Member expelled on resolution passed at meeting—Reasons for expulsion not discussed at meeting—Rule authorising expulsion without assigning reason—Power of Court to interfere.*

To deprive a person of his position as a member of a social club is a very serious and grave measure. But a club is undoubtedly an autonomous institution and a Court of law will not lightly interfere with its action in expelling a member unless it has violated the recognized rules of procedure in that connection or those of natural justice. Before a member is expelled, there must be due inquiry, the member concerned must have notice of what is accused of and must have an opportunity of being heard, and the decision to *expel* must be *honestly* arrived at after he has had a full opportunity of being [illegible]

[illegible] persons the inference that objectionable conduct had been established or that there are sufficient reasons for [illegible]

[illegible] of the reasons for such expulsion is illegal and *ultra vires* although the rule of the club says that they need not assign any particular reason for excluding any member whose presence in the club is considered detrimental to its interests The omission to discuss the reasons for the expulsion is a flagrant abuse of the rule of the club and justifies interference by the Civil Court (*Wassoodew, J*) AMBALAL SARABHAI v. PHIROZ H ANTIA. 40 Bom L R 1213

——*Civil Court—Ghatwal—Fitness to hold office—Power to decide*

Per *Manohar Lall, J*—The decision of fitness for the post of a Ghatwal must ordinarily rest with the executive authorities subject to this important reservation *that if the executive has simply made a pretence of* dealing with the question of the fitness of the Ghatwal who claims to be recognised as the next Ghatwal and declares him unfit in an arbitrary manner or in a manner which the law would not recognise then the Civil Courts are free to interfere

Per *Chatterji, J.*—Appointment of Ghatwal is primarily an executive job If the executive appoints a wrong man while dismissing the claims of a right person, the Civil Court can at the most give such right person a mere declaration that the appointment made is bad But the Court cannot force the executive authorities to remove the one and appoint the other instead A mere declaration therefore would be infructuous if the executive authorities, for reasons of their own, ultimately choose not to act upon that declaration Such declaration the Court should not grant (*Manohar Lall and Chatterjee, JJ.*) JOGENDRA NARAIN v. RADHA PRASAD 17 Pat 398=175 I C 854= 19 Pat L T. 519=4 B R 633=11 R P 20= A I R 1938 Pat. 245

——Civil Court—Infringement of statutory right—Cause of action disclosed—Duty to entertain claim—

Suit for damages by servant of Municipality dismissed in violation of rules—Maintainability. *See* BOMBAY MUNICIPAL BOROUGHS ACT, S. 33.

39 Bom L R. 1269.

——*Civil Court—Municipal Board—Exercise of powers by—Suit in Civil Court—Competency.*

Where a local authority, such as a Municipal Board, is invested with discretionary powers by the statute creating it, a Civil Court can interfere in cases where such powers are exercised in a capricious, wanton and arbitrary manner or in an unreasonable manner. (*Ganga Nath, J.*) GOVIND DEOJI v. MUNICIPAL BOARD OF BINDRABAN

174 I.C 445=10 R A. 577=1938 A.L R. 273= 1937 A.W.R 1203=1937 A L J. 1358= A.I R. 1938 A. 110.

——*Civil Court—Order of Collector within his revisional jurisdiction—Revisional powers of Civil Court*

Civil Courts cannot exercise revisional jurisdiction in respect of any order of the Collector which is within his revisional jurisdiction and cannot consider whether such [illegible]

[illegible] A.I.R. 1938 Mad 318=(1938) 1 M L.J. 187.

[illegible] 11 R A 211=1988 A.L J. 686= 1938 A W R (H C) 458=A.I R 1938 All. 420.

——*Civil Court—Power to re instate Ghatwal properly dismissed*

The Court cannot re instate a person in the Ghatwal land who has been properly dismissed from the office. (*Manohar Lall and Chatterjee, JJ*) JOGENDRA NARAIN v RADHA PRASAD. 17 Pat 398= 175 I C. 854=19 Pat L T 519=4 B R 633= 11 R P 20=A I R. 1938 Pat 245.

——*Civil Court—Suit for possession—Plaintiff coming to Court on strength of right of succession on death of last tenant*

Where the relationship of landlord and tenant does *not exist between the parties, and the plaintiffs come to* the Court on the strength of their right of succession which devolves upon them on the death of the last tenant the suit is cognizable by a Civil Court. (*Kitchlu and Wazir, JJ*) KHUSHIA v BAGU

40 P.L R J & K 40

——Civil and Revenue Courts—Claim for share of profits as co tenants—Denial of tenancy *See* AGRA TENANCY ACT, S 230

1938 A.W R (H C.) 326.

——Civil and Revenue Courts—Collectorate partition—Power of Civil Court to re-open or alter at the instance of co sharer who was party to such partition *See* BENGAL ESTATES PARTITION ACT, SS 22 AND 25.

18 Pat L T. 843.

——Civil and Revenue Court—Joint Hindu family—Fixed rate tenancy owned by—*Alienation* by one member—Suit to set aside and to declare that it is not binding on the family—If excluded from Civil Courts. *See* AGRA TENANCY ACT, SS. 99 AND 121

1937 A W R 919=A I R. 1938 All 17.

——*Civil and Revenue Court—Litigation in Civil Court for long time—Findings as to respective shares*

refused to accept them. Thereupon *C* instituted a suit at Raipur against *B* and other indorsers.

Held, that the only cause of action in defendants in the case were jointly liable was of action on the principle contract, that is the contract in which the drawer *A* was liable as the principal debtor. The rest were all liable as sureties and their liability being co-extensive with that of the principal debtor the cause of action against them when sued

pur and no part of it arose at Raipur because firstly the hundis were drawn at Nagpur, secondly notice of dishonour under S. 35, Negotiable Instruments Act, had

——*Revenue Court—Duty to give effect to possession obtained through Civil Court—Limits—Sale of grove in contravention of Government Notification 521/1 A 93 of 1932*

as either timber or standing timbers or produce of land. A Civil Court can ord the latter but not of the former. Where sells a grove and the purchaser obtain though ordinarily Revenue Courts cannot effect to such possession obtained through yet where the civil Court had no jurisdict. grove, the Revenue Court can refuse to give effect to possession obtained under such a sale. (*Mehta, J.M.*) BIR BAHADUR RAI *v.* JAGDHAR. **1938 R D 744= 1938 A.W R (B R) 356=1938 A.L J (Supp) 123**

——Revenue Court—Tenant illegally ejected—Subsequent introduction of new ! Remedy of ejected tenant—Su Revenue Court against landlord Necessity for civil suit *See* S 108 (10) **1937 A W.R**

——Special tribunal appoint Court's jurisdiction. *See* C P CODE S 9—SPECIAL TRIBUNAL **A I R. 1938 Rang. 392**

JUS TERTII. *See* (1) EJECTMENT.
(2) EVIDENCE ACT, S 116.

——*Plea of—When open—Suit for possession—Title of true owner already adjudicated upon*

has an existing right and that, that right has not been

Small Cause Court.

nance
rachi,

1106.

——**S. 14 (h)**—*Suit by wife against husband for maintenance amount—If exempt.*

A suit for recovery of money can in no sense be treated as a suit to enforce a contract, unless the contract coins Therefore a suit for the recovery of a even though it be not nizable by the Court of not a suit for specific (*Mehta and Lobo, JJ.*) **175 I.C. 142= 10 R S. 286=A I R 1938 Sind 106.**

——**S. 24**—*Scope—Security—Amount of*

The purpose of S. 24 is to allow the Court power

section but excessive or punitive security cannot be demanded (*Davis, J.C. and C. Mehta, J*) GUSTAD BAHRAM *v* A SAID **177 I C 780=16 R S. 68 (2)= A I R 1938 Sind 191.**

tely choosing

party to move

A I.R. 1938 Sind 106.

KUMAUN—*Pre emption*—Nayabad *grant—Transfer —If gives rise to right of pre emption—Who can pre-empt*

When the Government as the owner of the unmeasured

was not carved out of the village or measured portion but only out of the government or unmeasured land. Until it is included in the village at the next settlement, it would retain its separate character (*Iqbal Ahmad, J.*) BISHAN SINGH GAUR *v.* P. R. SHERRED. **177 I C 857=1938 A L R. 797=11 R A 229= 34= 529.**

village in Kumaun consisted of two portions, a

KUMAUN TENURES.

portion which constituted the village proper and consisted of *abadi* and the cultivated land, and an unmeasured portion consisting of a large area of land in which the residents of the village had grazing, timber and some other rights This portion is the property of the Government. (*Iqbal Ahmad, J.*) BISHAN SINGH GAUR *v.* P. R. SHERRED. 177 I.C. 857=1938 A.L.R 797= 11 R A 229=1938 A.L.J 711= 1938 A W.R. (H C) 464=A I R 1938 All. 529.

KUMAUN TENURES—*Gaon Sanjait Parat Bahak land—Nature of.*

Gaon Sanjait Parat Bahak land is uncultivated waste land which is measured but on which r assessed (*Collister and Bajpai, JJ*) *v.* NAND RAM. 174 I C. 470=193 1938 A W R. (H.C.) 48=1 1938 A L.R. 282=19.. A L J. 4= A.I.R 1933 All. 136.

——*Khaekari village—Pucca and kachcha khaekari —Origin, status and rights of.*

There are two distinct tenures called by the same name "Khaekari" in Kumaun Division. One class of tenure is the under proprietary khaekari, that is, pucca khaekari, and the other the occupancy khaekari or kachcha khaekari The first class consists of ex-proprietors who have still got under-proprietary interests in the land and are superior to ordinary occupancy tenants,

small sum in addition to the quota of revenue due from the land recorded in their names. This small sum is paid as malikana to the hissedar or proprietor, who has, however, no power to interfere with the pucca khaekar or his land, waste or cultivated. Where the land granted was already held in propriety by others, those occupant proprietors, if they continued on the

rested with the original occupants, who were now termed khaekars or occupants in distinction from thatwan or proprietor. If the grantee did not at once exercise to take part of the village into his own immediate possession, he was subsequently debarred from getting a footing there at all, and remained entitled to his normal dues. Where the grantee or sayana or hisse portion of the estate into his immediate cultiv village became a kachcha khaekari village, the grantee did not at once so exercise his village became a pucca khaekari village. *and Bajpai, JJ.*) JAINT SINGH *v.* NAND R 1938 A.L J. 4=174 I.C. 470=1938 R D. 153= 1938 A W R. (H.C.) 48=10 R.A. 579= 1938 A.L R 282=A.I.R. 1938 All. 136.

——*Malguzar or Padhan—Status and functions of—Land held by—Nature and incidents of—If khudkasht—Hissedari rights.*

There is usually in the villages of Kumaun a padhan

as sirtan of the state as hissedar. The holding by a

LAH. H. C. RULES AND ORDERS VOL. I, Ch. I-A R. 4.

padhan-hissedar of padhanchari or malguzari land in a khaekari village is not a holding of khudkasht. He holds it as a sirtan and not with hissedari right in it. (*Collister and Bajpai, JJ.*) JAINT SINGH *v.* NAND RAM. 1938 A.L J. 4=174 I.C 470= 1938 R.D. 153=1938 A W R. (H C.) 48= 10 R.A. 579=1938 A L R 282= A.I.R. 1938 All 136.

——*Pucca Khaekari—Absence of ghar-padhan village—Village being hamlet of kachcha khaekari—If conclusive of kachcha khaekari nature.*

ar-padhan in pucca ssarily follow that in a village, that lage. Nor does the a kachcha khaekari village conclusive that the former is also a kachcha khaekari. When the two are separate entities, and have continued to be separately assessed, the incidents of the one should not be made necessarily to apply to the other. (*Collister and Bajpai, JJ*) JAINT SINGH *v.* NAND RAM. 174 I C. 470=1938 R D. 153= 1938 A W R. (H.C.) 48=10 R A. 579= 1938 A.L R. 282=1938 A L J. 4= A I R. 1938 All. 136.

——*Pucca khaekari village—Death of khaekar without direct heirs—Right to holding of deceased—*

munity of khaekars and not to the hissedars. The mere fact that a hissedar has effected an entry into the village and got some khudkasht possession should not on principle affect the status of the village or of the remaining khaekars so far as the remaining lands are concerned. There is no equity in holding that the whole body of under-proprietary cultivators should be or position merely by a hissedar one holding, and if a zamindar of his under-proprietors, there is no justification for the conclusion that all the other under proprietors should be reduced to the status of occupancy tenants. The status of the village cannot thereby be reduced to that of a kachcha khaekari village. (*Collister and Bajpai, JJ.*) JAINT SINGH *v.* NAND RAM. 174 I C 470=1938 R D. 153= 1938 A.W.R. (H C.) 48=10 R A. 579=

1938 M.W.N. 804.

LAHORE HIGH COURT RULES AND ORDERS, VOL 5, CHAP. 1 A, R. 4—*Judges sitting in Letters Patent appeal—Jurisdiction to grant extension of time.*

Extension of time in case of a Letters Patent appeal filed after the period of limitation under R. 4 of Chap. I-A, Vol. 5 of the Rules and Orders of the Lahore High admitting the t appeal are not meaning of R. 4 an extension in (*Young, C. J.* v OFFICIAL 938 Lah. 398= 40 P.L.R. 1050=A.I R. 1938 Lah. 325.

LAMBARDAR.

LAMBARDAR—*Conviction of lambardar under S. 193, I. P. Code—Rights of other members of family—If affected.*

Conviction of a lambardar under S. 193, I. P. Code is not in itself sufficient to debar other members of the family from their right to succeed to the lambardari. (*Garbett, F. C*) ISSA v. FATEH MAHOMED.
17 L.L.T. 10.

——*Hereditary rights.*

Hereditary rights in *lambardaris* are to be guarded jealously; and the line of succession may be broken on financial grounds only when the safety of the collection of the land revenue cannot be secured. (*Garbett, F.C.*) LAL DIN v. RAHMAT [illegible] **17 L.L.T 13**

——*Right to dues*— [illegible] *by co sharers—If assen*[illegible]

A lambardar is en[illegible] even if the co-shares [illegible] the treasury, because [illegible] be enforced always. ([illegible] *M.*) TARA SINGH v [illegible]
1938 A.L. [illegible]

LAND ACQUISITI[illegible]

'*Land*'—*If includes* [illegible] *Government—Compensation for building only—If comes under the Act.*

[illegible]

1938 A.W.R. (H C) 811=1938 A L J 1171.

——**Ss. 4 and 6**—*Notifications under—Lapse of some years between notifications under S. 4 and those under S. 6—Effect—Proceedings—If illegal and void.*

Acquisition proceedings cannot be held to be illegal and void by reason of [illegible] the notification under [illegible] S 6 In the case of [illegible] scheme for which the [illegible] revision of which nece[illegible] bound to be delay and [illegible] it is not open to the C[illegible] proceedings as illeg[illegible] *Wassoodew, JJ.*) PA[illegible] STATE [illegible]
39 Bom L L[illegible]

[illegible]

The Act nowhere postulates identity in the sch[illegible] means of which the public object is to be carri[illegible] All that is legally necessary is that the lands wh[illegible] intended to acquire for a public purpose should [illegible] fied first under S 4 and then under S. 6 of th[illegible] When that has been done the *requirements of* [illegible] are satisfied. Where the object of the sch[illegible] which the acquisition is made is unchanged, the fact that there has been a change in the method of carrying out the scheme and financing it would not make it a new scheme so as to necessitate a fresh notification under S. 4 of the Act. (*Broomfield and Wassoodew,*

LAND ACQUISITION ACT (1894). S. 11.

JJ) PARSHOTTAM v. SECRETARY OF STATE.
174 I.C. 67=10 R.B 420=39 Bom L R 1257= A I R 1938 Bom. 148.

——**Ss. 4 and 6**—*Scope—Acquisitions for Municipality for carrying out scheme—Alteration in scheme between first and final notifications—Effect—If deprives Government of power to go on with acquisition—Proceedings—If illegal or* ultra vires—*Test—Opinion of Local Government.*

Under the Land Acquisition Act, it is the Local Government that has to be satisfied as to the existence of a public purpose. In the case of an acquisition for a Municipality to enable it to carry out a scheme, Government is not deprived of the power to go on with the [illegible] rval [illegible] final [illegible] the [illegible] that [illegible] nici- [illegible] the [illegible], the [illegible] two [illegible] vant, [illegible] *ltra* [illegible] TAM [illegible] 37=
10 R B. 420=39 Bom.L.R 1257= A.I R. 1938 Bom. 148.

[illegible] *tions are made* A notification under S 6 does not therefore become illegal because it seeks to acquire lands for the purpose of recouping the cost of the scheme. Where the Municipality or public body has power conferred upon it under the statute creating it, to [illegible]

[illegible] the owner as required by S 9, Cl. (3), and in the [illegible] take the subse- [illegible] RAHIMBUX
32 S L R 8= [illegible] 1938 Sind 6.

—*Inam land* [illegible] *there are male* [illegible] *ested in* [illegible] *line*—

[illegible] of com- [illegible] alue of [illegible] hat the [illegible] between the several interests must not be based on hypothetical grounds Any remote interest should not be taken into consideration. In the case of an inam village granted under a sanad providing that the inam should continue in the family so long as there may be in exist-

best a remote contingent interest, the chance of the inam coming to an end by failure of the male line. Such an interest or chance can scarcely be appreciable by a money value or a money payment. The inamdar is therefore entitled to the whole compensation money without deduction. (*Rangnekar and Macklin, JJ.*) MAHADEV BALKRISHNA *v.* DT. DEPUTY COLLECTOR, POONA 176 I.C. 612 = 11 R.B 44 = 40 Bom.L.R. 432 = A.I.R. 1938 Bom 325.

——S. 18—*Decision of Collector that government is the owner of site—Award of compensation for building alone—Reference to District Judge—District Judge, if has jurisdiction to entertain reference.*

Where in respect of certain Bungalows, both the government as well as the owner, claimed the ownership

tion Act is competent and the District Judge has jurisdiction to deal with such a reference. (*Harries and Misra, JJ.*) SECRETARY OF STAEE *v.* ALLAHABAD BANK LTD 1938 A.W.R. (H.C.) 755 = 1938 A L J. 1161.

——S 18—*Reference—District Judge returning reference on the ground that he has no jurisdiction—Appeal to High Court if competant—Conversion into*

——S. 23—*Compensation—Agreement between Government and claimant for calculated on rental basis—Assessment of compensation.*

Where there is an agreement between the Government and a person claiming compensation under the Land Acquisition Act that the claimant would get the price of the holding calculated on a rental basis at a certain sum per month plus the statutory con . . . to be calculated on the net value . . . property and such net value can . . . the usual deductions for cess and ground rent. (*Wort and Manohar Lall, JJ.*) SECRETARY . . . SITAL PRASAD 175 I C. 1007 = 4 B.R 672 = 19 Pat.L.T. 774 = A.I.R.

——S. 23—*Compensation—Basis of.*

The mere fact that the High Court has in a particular case given 16 years' purchase to a person claiming compensation under the Land Acquisition Act is not sufficient basis on which as a matter of law and principle, the High Court should give 16 years' purchase in all such cases. The matter depends entirely upon the circumstances of each case. (*Wort and Manohar Lall,*

where there is no prevailing price.

Lands are bought and sold by bargaining. Land acquisition operations are carried on at places where for generations there has not been any sale of land whatsoever. The place is such where no one wants to buy land. In such cases where there is no prevailing price of land nor any standard of comparison, market value must be ascertained by finding out the income which the land was bringing to the owner and then capitalizing it on the principle of reinstatement. (*Mahomed Noor and Chatterjee, JJ.*) SECRETARY OF STATE *v.* RAWAT MULL NOPANY. A I.R. 1938 Pat. 618.

——S. 23—*Methods of valuation—Claimant challenging valuation—Burden of proof.*

The methods of valuation of land under the Land

acquired and possessing similar advantages, and (*c*) a number of years purchase of the actual or immediate prospective profit from the land acquired. To arrive at a fairly correct valuation, it is necessary to take two or all of these methods. An exact valuation is practically impossible. It is the approximate market value that at most can be sought to be determined. Where a claimant challenges the valuation made by the Special Land . . . aim to

. . . ut the probative value of such evidence is very low, for, offers alleged in land acquisition proceedings are scarcely ever *bona fide*. They can easily be arranged without any loss or inconvenience to either party; so also, although the opinion of experts is evidence in such cases, its value is not great and it would not be possible to place reliance on this kind of evidence unless it is supported by or . . . where such evidence . . . incident with the best . . . such divergence or disagreement on material points between the evidence of

there. (*Lobo, J.*) SPECIAL LAND ACQUISITION OFFICER *v.* ASSUDOMAL. A.I.R. 1938 Sind 225.

——S. 23—*Premises abutting in common passage with an interest therein—Acquisition of both—Valuation.*

Certain premises abutting in a common passage with an interest in the common passage were acquired by the . . . ners of the premis- . . . higher rate as the . . . taken into consi- . . . The passage land . . . ibsequently by the . . . was acquired but no . . . ners of the premis-

es and the common passage in respect of the acquisition. A reference was made by the owners under S. 18, Land Acquisition Act. The tribunal made an award in favour of the claimant determining the value of the passage land at one-fourth the rate of the surrounding land.

Held, that by the acquisition of the premises with interest in the common passage, it was not intended that the entire proprietary interest of the owner in the common passage including all the rights in the sub-soil were acquired, and the fact that the adjacent land had received a higher valuation for the existence of the passage as a means of access could not lead to the conclusion that the land covered by the passage had lost its value to the owners

market value to the owner which may be held to be fair market value in respect of these lands (*Mahomed Noor and Chatterji, JJ.*) SECRETA WAT MULL NOPANY

——S 23—*Valuation—Exper* —*Written interrogatories—Proce*

The putting of written interr witness for submission of written unusual procedure (*Costello and Biswas, JJ.*) SECRETARY OF STATE FOR INDIA *v* BHUPATINATH DEB 68 C L J. 90

——S 23—*Valuation of land—Belting method*

Where a plot of land which was a proached by what was called a severed street and also by what was referred passage from another street, that comm however, skirting the plot along any c but merely debouching on it at one corner,

Held, that the fact that the land lay in the proximity

any such street (*Costello and Biswas, JJ.*) SECRETARY OF STATE FOR INDIA *v* BHUPATI

——S. 23 (1)—*Market value—Eviden awards—Examination of owners—Necessit*

Where in order to enable the determ market value of the acquired property, an award accepted by an owner of an adjacent property is produced in evidence, it is not obligatory on the part of the Government to examine such owner with reference to the circumstances under which the award came to be accepted. The Government using an accepted award, may or may not examine the owner or the person interested. (*Guha and Mitter, JJ.*) SECRETARY OF STATE *v.* NAGENDRA KUMAR BOSE. 42 C W N. 27.

——S. 23, Clause fourthly—*Applicability*—"*Loss of income*"—*Meaning of.*

The loss of income which is contemplated in Clause *fourthly* of S. 23 is the loss of personal income to the owner of the land. It contemplates a case in which, on account of the acquisition of a certain land, the value of other pro

erty itself which is being acquired. is a factor to be taken into consider arket value of the land itself which

Apportion

lessor and party in a the acqui erty into a he parties relatively to this sum ought to be the same as they were with reference to the property. Where a property is

the value of their respective interests It must follow on this basis that whatever is obtained by one party, the other takes the balance, and this ensures to each payment In an appor not surely r the lessee's Costello and R *v* PYARI N 1191= A I R. 1938 Cal. 740.

——S 31—*Scope—Duty of Court—Rival claimants—Decision of claims—If obligatory—Power to refer parties to separate suit*

Where rival claimants come before the Court on a reference under S 31 of the Land Acquisition Act, the claimants is There is no Court to refer J.) SWAMI

1938 M W N. 950=48 L W. 450= A.I R. 1938 Mad. 955.

——**Ss. 31 (2) and 32**—*Applicability—' If there be no person competent to alienate the land"—Meaning of—Personal inam grant to family with full rights in s il and heritable—Absence of condition against, alienation—Inamdar—Interest of—If incompetent to alienate—Acquisition of inam land—Deposit in Government securities—If justified.*

The words "if there be no person competent to alienate the land" in S 31 (2) of the Land Acquisition Act must necessarily apply to a case where there is no present title in the person who has come forward as a claimant to the compensation fixed by the Collector. Ss. 31 and 32 provide for the case of persons who by reason

grantee, the grantee having a heritable estate in full proprietorship, the grant being of the soil and conveying a full interest in the land withou' restraint of alienation, the inamdar a owners of the villages and have an and are entitled to the benefit of tl person cannot be said to have no pc land within the meaning of S. 3 (2) inamdar does not fall under Ss 31 a of compensation awarded for acquis lands cannot therefore be directed t Government securities and interest inamdar. He is entitled to receive compensation in cash. (*Kangnekar* MAHADEV BALKRISHNA *v.* DT. DI POONA. 176 I C. 642 = 11 R B. 44 = 40 Bom.L.R. 432 = A.I R. 1938 Bom. 325.

——**S. 34**—*Agreement that claimant should take away material on land to be acquired—If deprives right to interest*

Under S. 34, the claimant is entitled to interest at 6 cent. per annum from the time of possession by Government until the sum or compensation is paid or deposited

should relinquish his statutory claim of interest. (*Wort and Manohar Lall, JJ.*) SECRETARY OF STATE *v.* SITAL PRASAD. 175 I.C. 1007 = 11 R P. 34 = 4 B R 672 = 19 Pat L T. 774 = A.I.R. 1938 Pat. 266.

——**S. 48**—*Applicability—Jurisdiction of Court under—Nature and extent of—Proceedings under Act declared invalid by decree in suit—Effect of—Remedy*

reason of a decree declaring the proceedings invalid. In such a case the proceedings automatically drop and the

one and the Court has no right to widen it and to act in contravention of the Act (*Puranik, J.*) MUNICIPAL COMMITTEE, NAGPUR *v.* RATANLAL. 177 I C. 958 = 1938 N.L.J. 54 = A.I.R. 1938 Nag. 169.

——**S. 48**—*Construction and Scope—Jurisdiction—"Withdrawal"—Meaning of—Reference under S. 18—Suit by owner in Civil Court for declaring proceedings invalid—Decree—Effect on proceedings—Subsequent discharge of Government from proceedings—Municipal committee at whose instance proceedings started not appealing—Application by owner for Compensation—Order awarding—If* ultra vires—*Revision—Interference.*

R, the owner of a piece of land with a structure, for the acquisition of which proceedings were started under the Land Acquisition Act, contested the proceedings and did not accept the award a reference was consequently

under S. 18 which were stayed pending the suit were revived, and the Collector on behalf of the

Municipal Committee awarded compensation as against the Committee. The latter filed an appeal to the High Court and in the alternative moved in revision.

Held, (1) that with the decree declaring the proceedings invalid (which became final) the reference under S. 18 came to an end and the Court should therefore have dropped the proceedings in the ordinary course, (2) that when the Collector was discharged from the

tion as the order was against the Committee and it was not necessary that the Government should move in the matter; (4) that the necessary consequence of the decision in the civil suit declaring the proceedings invalid was to terminate those proceedings and to make the Court *functus officio*, and the Court therefore had no jurisdiction to entertain any application for *R*, or to award him damages under S. 48 of the Act, as there withdrawal by the Government within the f S 48, which contemplated only a voluntary d; (5) that assuming that there was a withdra- S. 48, the power to award compensation under S. 48 (2) was conferred on the Collector and not on the Court; and the Court could have no jurisdiction Collector in the first instance made an award reference under Part III of the Act; and (6) ler of the Court having been made without , the Court having usurped the functions of the Collector, the case was pre eminently one in which the High Court should interfere in appeal or in revision under S. 115, C. P. Code, and set aside the order. (*Puranik, J.*) MUNICIPAL COMMITTEE, NAGPUR *v.*

LAND ACQUISITION ACT (1894), S. 49.

RATANLAL. 177 I C. 958=1938 N L J. 54= A I.R. 1938 Nag. 169.

——S. 49 (1), proviso 2—*Order of Collector refusing to make reference—Revision.*

The refusal of a collector to make a reference to the Civil Court under the second proviso to S. 49 of the Land Acquisition Act the question whether the land proposed to be acquired did or did not form part of the petitioner's house, is a ministerial act, and the Collector does not thereby constitute himself a Court subordinate to the High Court. His order is, therefore, not subject to revision by the High Court. (*Mackney, J.*) MAUNG NYUN *v.* THE COLLECTOR OF MANDALAY.

1938 Rang L.R. 623.

——Ss 50 and 54—Right of appeal—Acquisition at the instance of Municipal Committee—Proceedings on reference—Government discharged—Subsequent order of compensation under S. 48 against Municipal Committee—Appeal by latter—If incompetent. *See* LAND ACQUISITION ACT, S. 48. 1938 N

LAND CUSTOMS ACT (XIX OF 1924),

Sub Inspector of Customs—Complaint by—C

—Notification under S. 3 (1)—Effect of.

Under S 7 (2) of the Land Customs Act, a Land Customs Officer is competent to make a complaint to a Magistrate. In view of the Notification of the Governor-General in Council under S. 3 (1) of the Act, appointing all Sub Inspectors of Customs to be Land Customs Officers, a Sub-Inspector of Customs is competent to prefer a complaint under S. 7 (2), because he is a Land Customs Officer. (*Burn, J.*) PUBLIC PROSECUTOR *v.* KRISHNAMURTHI AYYAR. 177 I.C 335=

39 Cr.L.J. 867=1938 M.W.N 511=11 R M. 3

47 L.W. 576=A.I.R. 1938 Mad 7

(1938) 1 M L J

those for whose benefit the loan was granted. There is

Wajib ul arz—*Construction—Principles.*

On a construction of the *wajib-ul-arz* in question it was held that the *riya* who had constructed at his own expense a house, had only two rights (1) a right to sell the materials, and (2) a right to make a gift of the right of occupation It was further held that these two were separate rights which were not comb produce a third right of sale of the righ Where a *wajib ul arz* has to be read custom, it is not permissible to put inferential construction. The terms of

——*Abadi—House occupied by tenant—Appurtenance to tenancy—Presumption—Right of ejected tenant to compensation for house and adjacent trees*

Where a tenant is found occupying a house in the

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abadi of an agricultural village, there is a presumption that he holds the house appurtenant to his tenancy and he has no right to retain it against the wishes of the landlord on ceasing to be a tenant in the village Where, therefore, a tenant has been ejected from his holding, the burden of proof is on him to show that in spite of his ejectment he has a right to remain in occupation of the house. The fact that the landlord gave his consent to the erection of the house does not estop him from ejecting the tenant without giving him compensation for the value of the house. Nor is the tenant entitled to any compensation for trees of spontaneous growth adjacent to his house when he is ejected from his house. (*Hamilton, J.*) BANARSI DAS *v.* KALKA.

1938 R D. 256=1938 A.W R (C C) 20= 1938 O.A. 482=1938 O W N. 171.

——*Abadi—Tenant in possession of land in front of his house as Sahan darwaza—Effect of long enjoyment*

being enjoyed as such. The landlord is to be deemed in proprietary possession of such land and he is not entitled to eject the tenant by taking actual possession though the tenant has no right to put up any structure thereon without the express permission of the landlord. If the tenant puts up a verandah on such land without the landlord's consent the landlord can obtain a decree for its demolition but not a decree for actual possession of the land If, however, the land can be of no practical

) HANUMAN PERSHAD *v*

1938 O A 428=

(C C.) 31=1938 R D 335=

1938 O W N 285.

dar in the village (*Zia ul-Hasan, J*) BANKEY LAL *v.* VIDYA SAGAR ABKAR. 177 I.C. 969= 1938 O A. 793=1938 O L R. 461= 1938 O.W.N 1039=A I.R 1938 Oudh 251

——*Acceptance of rent from sub-tenant by zamindar*

DEO. 1938 A L J (Supp) 61= 1938 A.W R. (B R) 262=1938 R D. 604.

——*Admission to tenancy—Admission by zamindar after transfer of zamindari rights—If can be recognised.*

The admission of a person to the tenancy of a holding by a zamindar after he had transferred his zamindari rights to another, cannot be recognised. (*Darling, S. M. and Bomford, J M.*) KISHAN PRASAD *v.* KARTARA. 1937 R D. 426.

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occupancy tenants. The genuine tenants in chief are the so-called sub-tenants. (*Darling, S.M. and Mehta, J.M.*) SWARATH SINGH *v.* MAKUND DAS. 1938 R.D. 827.

——*Occupancy tenant—Absolute occupancy tenancy—Nature and incidents.*

Absolute occupancy tenancy is a special kind, heritable and assignable. It springs out of settlement and statute. It does not amount to proprietorship. In such a case there is either a reverter or the Crown takes by escheat. (*Stone, C.J. and Clarke, J.*) DARYAO SINGH *v.* KUKDAY 1938 N.L.J. 366.

——*Permanent tenancy—Inference of—Origin unknown—Land occupied by same tenant for over 100 years—Erection of thatched buildings with mud walls—If permanent.*

Where it is found that the origin of a tenancy is unknown, that the family of the tenant [illegible] land for at least 100 years, that the la[illegible] for residential purposes, that no rent h[illegible] that the land has been occupied by a b[illegible] of twelve rooms and three court yards, made of mud and the roofs thatched, [illegible] whether the buildings are made of mud or bricks depends very largely upon the financial position of the person occupying the land. The question of the nature of a tenancy being a mixed question of fact and law, the inference to be drawn from the nature of tenancy becomes a question of law which can be gone into in second appeal. (*Wort, J.*) SHAIKH DARGAHAN *v.* HAFIZ MOHAMMAD. 176 I.C. 562 = 4 B.R. 736 = 11 B.P. 93 = 19 Pat.L.T. [illegible]

——*Permanent tenancy-* [illegible] *Origin of tenancy unknown* [illegible]

A landlord brought a su[illegible] homestead land. It was [illegible] tenancy was unknown and [illegible] repeated transfers of the tenancy to the knowledge of the landlord. The tenant had erected substantial structures to the knowledge of the landlord or his predecessor. The rent was paid uniformly until the commencement of the current s[illegible] rent was changed slightly.

Held, that a presumptio[illegible] created by a presumed lost g[illegible] the circumstances and the [illegible] ejected. (*Rowland, J.*) MADHUSUDHAN SWAIN *v.* DURGA PRASAD. 173 I.C. 259 = 4 B.R. 231 = 10 P.R. 396 = A.I.R. 1938 Pat. 7.

——Permanent tenancy—Registered lease by building purposes—Term not mentioned—Lessee having no rights in trees and not to alienate or encumber without consent of lessor—Presumption as to duration of lease. *See* T. P. ACT, S. 106. 1938 M.W.N. 1236.

——*Permanent tenancy—Tenancy held at low rate for considerable number of years—Presumption.*

[illegible] has been held at a low rate for a considerable number of years, though the value of the land and with it the letting value thereof has increased to a great extent—that is an element which, with other facts, leads to an inference of fixity of rent and of permanency. (*Guha and Mitter, JJ.*) PRODYOT KUMAR *v.* RADHAKISHEN. 42 C.W.N. 304.

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——*Person holding* bila tasfia—*If can acquire grove rights.*

No grove rights can accrue to one who is holding *bila tasfia*. (*Darling, S.M. and Bomford, J. M.*) BILASI SINGH *v.* RAM CHANDER SINGH. 1937 R.D. 462.

——Relationship—Person in possession accepted by receiver as tenant and paying rent to receiver for several years—Effect. *See* BIHAR TENANCY ACT—OCCUPANCY RAIYAT. 19 Pat.L.T. 570.

——*Rent—Charge for—Lessee undertaking to cultivate land, reap the crop and deliver amount of rent in kind to lessor—If covenant to pay out of crops raised on leased land—Charge for rent—If created.*

An undertaking by a lessee in the lease executed by him in favour of his lessor to cultivate the demised land, reap the crop and deliver to his lessor the [illegible] of the land [illegible] (*Leach,* [illegible] KARUPPA- [illegible] GOUNDAN *v.* KONDAMA NAICKER. 1938 M.W.N. 917 = 178 I.C. 509 = A.I.R. 1938 Mad. 940 = (1938) 2 M.L.J. 565.

——*Rent—Decree for—Execution sale—Reversal—Restitution—Mesne profits awarded to tenant—If can include rent payable by tenant to landlord.*

Where mesne profits are awarded to a tenant against his landlord in proceedings for restitution consequent on the reversal of an execution sale, such profits should not [illegible] 1938 P.W.N. 511 = A.I.R. 1938 Pat. 573.

——*Rent—Dispute as to—Registered agreement and remission slip—Preference.*

Where the zamindar claimed an enhanced rent based [illegible] *and Bomford, J.M.*) BADRI *v.* MARIAM BIBI. 1938 A.L.J. (Suppl.) 32 = 1938 R.D. 405(1) = 1938 A.W.R. (B.R.) 170.

——*Rent—Enhancement—Ejectment suit against non occupancy tenant under Agra Tenancy Act of 1901—Compromise—Tenant agreeing to pay enhanced rent in return for promise of occupancy rights—Effect of—Enhanced rent—If legally recoverable after Act of 1926.*

In a suit for ejectment of a non occupancy tenant paying a rent of Rs. 6, a compromise was effected under [illegible] 12 [illegible] Llm [illegible] e in [illegible] compromise was acted upon by both the parties. In a subsequent suit after Act III of 1926, by the plaintiff for rent at Rs. 12 the defendant pleaded that the legal rent was only Rs. 6.

Held, that the compromise having been acted upon there being nothing in the Act of 1901 to prevent the landlord and tenant from contracting in the manner

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they did, the rent legally payable after the compromise was Rs. 12, which became the rent payable. (*Darling, S.M. and Bomford, J.M.*) MAHOMED MUSTAFA ANSARI v. RAM SARUP AHIR. 1938 R.D. 202 (2) = 1938 A.W.R. (B.R.) 59.

——*Rent—Enhancement—Inamdar—Limit to enhancement of rent of tenants.*

ed beyond three times the assessment. Such a rule is a rule of thumb appropriate only in the case of permanent tenancies where land is held on payment of assessment only or on a rent only slightly in excess of it. (*Broomfield and Sen, JJ*) KRISHNA BHIMA v. LAXMIBAI. I.L.R. (1938) Bom. 465 = 176 I C 398 = 11 R.B. 30 = 40 Bom.L.R. 439 = A.I.R. 1938 Bom. 316.

——*Rent—Enhancement of—Suit for—Compromise decree fixing rent—Effect of—Right of tenant to claim remission.*

Where a suit for enhancement of rent is not fought out, but the parties agree that the rent should be fixed at a certain figure that constitutes a fresh agreement between the parties binding on them, the tenant would not therefore be entitled to claim any remission (*Darling, S. M. and Bomford, J. M.*) ADITYA PRASAD v. MATHURA. 1938 R D. 111 = 1938 A.W R. 56 (B.R.)

——*Rent—Liability for—Land included in area allotted to plaintiff on partition—Liability of intermediate tenant*

... co-sharers to create such an intermediate tenancy. (*Jack, J.*) NIBARAN CHANDRA BANERJEE v. MOMINADDIN HOWLADAR. 66 C L J. 534 = A.I.R. 1938 Cal 374.

173 I.C. 222 = 10 R S. 199 = A I.R. 1938 Sind 16

——*Rent—Suit for arrears of produce rent—Burden of proof.*

In a suit for arrears of produce rent, the burden of proof ...

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1938 P.W.N. 36 = 4 B.R. 324 = 173 I.C. 724 = 19 Pat.L T. 4 = 10 R P. 437 = A I R. 1938 Pat 81 (S.B.).

——*Rent—Suit for—Land in suit allotted to plaintiff's share by partition—Question if it appertains to Mahal paying rent—If can be raised in defence in rent suit—Bengal Estates Partition Act.*

by way of defence in the rent suit. It should have been decided in the partition proceedings. (*Jack, J.*) KOKARAM BAIRAGI v. KUMAR BIMALENDU ROY. 66 C.L J. 578.

——*Rent—Suit for—Maintainability—Lessee leaving premises before expiry of term.*

A person contracted to take certain premises on lease for a period of three years and subsequently extended it to a period during which he would remain in the town. After remaining in possession of the premises for a long period he left the premises without any sufficient reason before the expiry of the term in spite of the warning given by the landlord that he would be liable for rent so long as he would remain in the town. The landlord thereupon took possession of the premises and brought a suit for recovery of rent for a part of the unexpired period of lease.

Held, that a suit for rent could lie for the unexpired period of lease. (*Tek Chand, Offg. C.J.*) H. G. LUSH v. RAM CHAND MANCHANDA. 40 P.L R. 750 = A.I.R. 1938 Lah 454.

——Rent—Suit for in respect of part of holding— ...cree. *See* BIHAR ...R. 1938 Pat 305.

...*terest prior to suit*

... a mere claim for ... to damages or in... such a suit is not ...act. (*James, J.*) ...SHID. 1938 P.W.N. 689 = A I.R. 1938 Pat. 578.

——*Rent—Suspension—Application of doctrine—Tenant not put in possession of part of demised land—*

Held, that in the circumstances of the case, justice, equity and good conscience required that there should be no total suspension of rent but that there should be an equitable abatement of rent on account of the area of which the tenant was not in possession. (*M. C. Ghose* ...TH ROY v. ...C.W.N. 1030

... landlord, the ... ed to suspen-

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sion of rent is to be determined with reference

the land should be recorded as khudkhast in one fasli and personally cultivated in the next. If in the fields no sub tenants are shown in those two faslis it should be regarded as having been cultivated in khudkhast in those two years. (*Darling, S.M.* GAYA SINGH *v.* BHAGWAN DAS S

——Sir *land—Alienation by a c tenants—Determining factor.*

Ordinarily when *sir* is joint *sir* of several co-sharers and one of them alienates his sha claim ex proprietary rights, then applies for the demarcation of his of rent on it, the *sir* continues to proprietary body. If a demarcation is portion becomes khalsa land in which the of the soil, instead of being mere non occ in *sir* land, become full tenants in chief capable of acquiring either occupancy rights therein after holding for 12 years under the Act of 19 under the Tenancy Act of 1926. not liable to ejectment from (*Darling, S.M. and Mehta, J.M.*) *v.* DHARAM DEO SINGH. 1938 R D. 822.

——Sir *land—Co-sharer mortgaging specific plots of* sir *and also surrendering possession—Rights gagee.*

Where a co-sharer transfers by way of specific plots of *sir* and also surrenders poss the mortgagee, the possession of the mortga *khudkasht murtahin* and it should be so entered in the papers, if the other co sharers do not object. (*Darling, S.M. and Bomford, J.M.*) DHANUKDHARI KEWAT *v.* SANDAGAR SINGH. 1938 A.W.R. (B R.) 301 = 1938 R D. 422.

——Sir *land—Ejectment of tenant—All co-sharers, if should join.*

Sir is a purely personal holding, the rights in which can only be exercised by all the co-sharers. But in a suit for ejectment by only one of the co sharers where the other appears in the witness box and states that he has no objection to the suit, it should be taken that for

status of tenant.

It is both alike doubtful whether a co *sir* holder can mortgage a share of *sir* and whether such a mortgagee can obtain possession on the basis of such mortgage. But if the mortgagee does get possession the tenant in *sir* becomes a tenant in *khalsa* and he can acquire occu-

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gage in representative capacity—co-sharer.

hat if a part of joint *sir* is dis e co sharers and ex-proprietary and divided off, the whole *sir* still retains its character, as *sir* among the remaining co-sharers. But where the joint *sir* holders are a person and his brother's widow, and a mortgage by the brother is found to be in his representative capacity it must be

1938 R.D. 418 = 1938 A.W.R. (B R.) 312 = 1938 A.L.J. (Supp.) 108.

tition—Suit to eject

sir of other Zamin rly recorded as the *sir* s to join in a suit *nd Darling, S M.*) LAL. 1938 A.L J. (Suppl.) 62 = 1938 R.D. 598 = A.W.R. (B.R) 338.

— Subsequent sale— original sub tenant

Where a *Sir* plot is at first mortgaged and subsequently sold to pay off that mortgage, and the vendee leases it, such a lease is invalid as on the mortgage of

——Sir *land—Planting of grove—Effect.*

The mere fact that a grove has been planted in *sir* land will not affect the *Sir* character of the plot. (*Bomford, J M. and Darling, S M.*) RAM CHANDRA *v.* GOPAL LALJI. 1938 A.L.J. (Suppl) 58 = 1938 R D. 371 = 1938 A W.R (B.R) 203.

——*Tenancy at will—Nature of—If heritable.*

A tenancy at will amounts to no estate at all and terminates by the death of either party. It is not heritable. (*Stone, C. J. and Bose, J.*) ABDUL RAZAK *v.* SETH NANDLAL. 1938 N L J. 317 = A I R 1938 Nag 506.

temporary 1317 Fasli *P* on cere- services on *P* brought *D* alleged he land and in the construction was estopped from claiming possession of the land. The lower Court found that the structures were not substantial and no special circumstances were proved by *D*.

Held, that *D* had not acquired any right to prevent *P* from recovering possession of the land. The mere fact

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that there was no written lease although the land was taken as recently as 1317 did not affect the question. (*Dhavle, J*) MT. BATULAN v. SAYID MOHAMMAD NAEEM 175 I.C. 463=19 Pat L.T 553=4. B R. 623=11 R.P 8=A.I.R. 1938 Pat. 236

——*Thiccadar—Decree against for arrears of rent—Execution—Thicca interest—Saleability of*

In the absence of evidence to show that the thi the judgment debtor has come to an end with the for which arrears of rent have been decreed, the thiccadar-judgment-debtor has an interest which is *prima facie* saleable in execution of a decree against him for arrears of rent in respect of the *thicca* tenure. (*Dhavle, J*) SUKRA URAON v. MANJHI LAL BISWA

ing has been transferred in different portions to different persons In such a case, in order to defeat the claim of the plaintiff-landlord it is necessary for the tenant-defendant to prove a custom not merely of transferring

Manohar Lall, J) NARENDRA NATH PATRA v. BHAGABAT CHANDRA MALLIK. 176 I C. 75=4 B.R. 676=11 R.P. 50=1938 P.W N. 506=A.I R. 1938 Pat. 467.

——*Transferable tenancy — Onus—Lease created before Transfer of Property Act and not governed by Bihar Tenancy Act—If transferable—Erection of permanent buildings—Effect—Estoppel.*

A tenancy not governed by the Bihar Tenancy Act, and coming into existence bef perty Act (not being governe be held to be transferable landlord. There is no distinction in this respect between a lease for homestead and a lease for residential purposes. Under the general law one of the incidents of a tenancy, whether permanent or otherwise, in India prior to the

struction of settlement decree.

Where the *wajib ul arz* contained a reference to the decree of a Settlement Court that 'decree be given without rent in perpetuity in favour of the decree-holder and his heirs,' the decree by itself is not one for under-

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proprietary rights. In subsequent settlement it was recorded as under-proprietary with reference to the decree. The mere failure to correct the settlement records, in view of the reference in the *wajib ul arz* to the decree unaccompanied by any assertion of under-pro-

——*Underproprietary rights—Settlement Court decree creating underproprietary rights jointly—Subsequent division of Kewat into separate Khatas—If affects joint liability of co-sharers for rent.*

Where when underproprietary rights were created in

BISHUNATH SINGH. 172 I C. 918=1938 O L R. 60=1938 O.A 68=1938 R.D 221=1938 O.W.N. 59=1938 A W.R (C C.) 13=19 R.O. 209=A.I.R. 1938 Oudh 83.

Position of—Right of

ing house sites in cities that they have a right habit agricultural areas. to eject a transferee of ownership but also which prohibit the KEY LAL v. VIDYA)=1938 O A 793=1938 O L R. 461=1938 O.W N. 1039=A I.R. 1938 Oudh 251

LAND TENURE—Chowkidari jagir—Nature of—Resumability by Zamindar—Non performance of private services to Zamindar—If justifies resumption. *See*, GRANT—CHOWKIDARI JAJIR. 17 Pat. 315.

——Gairmazrua am—*Incidents of—Right of Zamindar to settle—Tenancy rights—If acquired by person taking settlement.*

ssion of is not who has settles it with any one, the person taking such settlement cannot and does not acquire any tenancy right by virtue of such settlement. (*Agarwala and Madan, JJ*) AMIRUDDIN

appoint any one whom they like. The position of the Ghatwal is not like a mere jaghirdar who has "a jagh" assigned for support and remuneration". In a where there is an express repudiation by the family to accept relation of Ghatwali or where

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power thinks that the incumbe removed has left no heir who rendering even the vicarious services of the obligations of the holder of such cases ruling power will be justifi these circumstances are themselves feiture in the persons of the entire

Under the *karaiyedu* system of land tenure the lan are temporarily cultivated in separate shares by the co shares villagers and are subject to periodic re distribu tion. The right of the whole community extends to the whole land and the right of each member is similar to the right of every other. No ryot, however, is in occupation of more than a fractional share of the whole land. (*Venkatasubba Rao and Abdur Rahman, JJ.*) RATNASWAMI NADAR *v.* PRINCE OF ARCOT'S ENDOWMENTS, TRICHINOPOLY. 48 L W. 109= 1938 M.W N. 740=A.I R. 1938 Mad 755=

continu

Separa

books—Tenant spending money on improvements—Effect of.

It cannot be said that *Khata Kul* tenants are permanent tenants They are no doubt privileged tenan the privilege does not extend to permanency of The fact that a *Khata* is opened in the name tenants in the landlord's books is by no means sive of the fact that they are permanent tenants. Nor can the fact that the land has remained continuously in the same family and descended from father to son for several generations be made the foundation of a right to hold the land permanently Further the spending of money by the tenants on developing and improving the land would not be a good ground for holding that the tenancy is permanent in law, though it may give rise to a claim for compensation on eviction. (*Broomfield and Macklin, JJ*) BABASAHEB APPASAHEB *v.* LAXMAN. APPA RAMAPPA. 40 Bom L.R. 1015= A.I R. 1938 Bom 492.

——*Mookhasa and Vritee Tenure*—Incidents—*See* LANDLORD AND TENANT, A I.R 1938 Nag. 269.

——*Patnidar—Duty to protect superior interest from revenue sale.*

There is no duty cast upon the patnidar *qua* patnidar, to intervene for the protection of the superior interest and prevent its sale for arrears of revenue. The fact

——Saranjam *Nature and incidents of*—Saranjamdar—*Power to create* saranjam *in favour of stranger out of own property.*

A *saranjam* or jahgir is a political tenure created from or dependant on political considerations, the existence of which can only be determined by Government. It is not open to a *saranjamdar* to create a *saranjam* out of his own property in favour of a stranger, though he can make a grant of an inam.

Quaere.—Whether an alienation by a *saranjamdar* of the whole or any part of his *saranjam* beyond his lifetime is void and illegal. (*Rangnekar and Sen, JJ.*) RAMCHANDRA *v.* LAKSHMIBAI. 176 I C. 586= 11 R.B. 36=40 Bom L R 400=A.I.R. 1938 Bom. 331.

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no longer performs the duties of the tenure does not alter the nature of the tenure, and a member who has separated from the holder is not a member of the joint family and cannot claim any interest in the tenure or to succeed to it on the death of the holder for the time being. (*Wort, J.*) NARAIN SINGH *v.* BAIKUNTH SINGH. 174 I.C 168=4 B.R. 388= 19 Pat L.T. 246=10 R.P. 486=1938 P W.N 558= A.I.R. 1938 Pat. 375.

occupies something in the nature of an office rather than the mere enjoyment of property. If that is not shown and the tenure is created by a patta, the presumption is

shown as a *thika doami* tenure. There was a remark that the rent was not permanently fixed, but there was nothing to suggest that the tenure holder enjoyed any right other than that conferred upon him by his patta. He did not produce the patta.

Held, that the effect of the entry in the record-of-rights would be to warrant the presumption that the tenure was a permanent one but held at a rent liable to enhancement and that the tenure-holder was entitled to transfer it by sale or mortgage. (*Courtney Terrell, C.J., James, J.*) SOMAR RAM *v.* BUDHU RAM. 175 I C. 482=1938 P.W N. 457=4 B R. 586= 10 R.P.630=19 P.L T. 421=A.I.R. 1938 Pat. 431.

LEASE.

Agricultural lease.
Assignment by lessee.
Construction.
Covenant for renewal.
Forfeiture.
Notice to quit.
Power to grant.
Registration
Renewal clause
Residential lease.
Rights of lessee.
Right to minerals.
Transferability
Validity

——*Agricultural lease—Portion of leased land planted with the shrubs—Tenant at liberty to utilise rest for any purpose—Nature of lease.*

A good portion of land which was subject-matter of a lease had already been planted with tea shrubs and on a portion thereof was a factory for manufacturing tea. There was a covenant in the lease that the tenant was not to break up or convert any part of the land which was under tea cultivation for any other purpose but that

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A.I.R. 1938 Cal. 589

——*Assignment by lessee—Decree for rent against assignee remaining unsatisfied—Subsequent suit for rent against original lessee—If barred—Joint debtors—Decree against one—When bar to suit against others—C. P. Code, S. 11.*

the debt being merged in
remaining cause of action
debtors. On the other hand,
than one debtor is either join
only, a judgment against one
claim against the others, because *in such a case* the cause of action against each debtor is distinct, and the

the lessee is not a mere guarantor for the assignee. A judgment for rent obtained by the lessor against the assignee, which remains unsatisfied, cannot operate as a bar to a subsequent claim against the original lessee on the covenant. (*Beaumont, C. J. and Wadia, J.*) MUNICIPAL CORPORATION OF THE CITY OF BOMBAY *v.* VASANTLAL FULCHAND I.L.R. (1938) Bom 471
177 I.C. 479=11 B.R. 91=40 Bom.L.R. 497
A.I.R. 1938 Bom. 36

——Assignment by lessee by way of English mortgage—Validity—Liability of mortgagee for rent lessor. *See* T. P. ACT (AS AMENDED IN 1929), S. 50 (E) 17 Pat. 499.

——*Assignment—Restraint by condition or covenant—Effect of—Lessee's power to assign subject to condi-*

end to it as soon as the assignment comes to his kno ledge if the lease contains a power of re-entry. I grantor can by a stipulation withhold from the grantee the power to assign absolutely, it *follows* that he can make the power to assign subject to conditions and can stipulate that any purported assignment which does not

ment his transfer shall not be valid."

LEASE.

177 I.C. 777=11 R.C. 275=67 C.L.J. 421=
42 C.W.N. 832=A.I.R. 1938 Cal. 478.

——*Construction—Charge if created for rent.*

Where a lease merely contained a general stipulation that if the rent is not paid the owner shall be entitled to recover it from the property of the lessee, it was held that under the terms of the lease the landlord was not a
could not claim priority over a
BIJAI SINGH JI *v.* BALLABH
1938 A.M.L.J. 100.

-Charre for rent—When created—
reap the crop
covenant to
n crops *See*

2 M.L.J. 565.

——*Construction—Lease for discharging prior debt by adjustment—No rent fixed—Nature of transac-*

NARAIN. 1938 A.L.J. (Supp.) 22=
1938 A.W.R. (B.R.) 151=
1938 R.D. 300

Construction— Mere agricultural lease or *theka*—Deed giving right to rents and profits and full rights of transfer—Rights made heritable—Immunity from ejectment under any circumstances—Nature of right conferred—Lessee—If *thekadar*—Rights—Saleability in execution *See* AGRA TENANCY ACT, S. 203
1937 A.W.R. 1043=1937 A.L.J. 1166.

public demand which shall from time to time be charged, assessed, or imposed upon the said mines or any part thereof by the authority of Government of India or Local Government or otherwise' and on the lessors paying

was, that the cess is levied on immovable property and that immovable property is liable to pay it and as such the lessor
(2) that

the mining lease. Even express words referring to public

LEASE

demands imposed upon the proprietors in respect of the mine would not have brought income tax within the covenant; (4) that the words "taxes, rates, assessments and impositions whatsoever" are followed by the words "charged, assessed or imposed upon the said mines" a variety of phrase which is intended to avoid restricting the covenant to cases in which the demand is in the strictest sense 'charged upon the land'. The phrases are

48 L W. 533=1938 A.L R. 683=
4 B.R. 811=A.I.R. 1938 P.C. 243=
(1938) 2 M.L.J. 410 (P.C.).

——*Construction—Putni Patta—Additional rent for future accreted lands—Liability of patnidar—Covenant running with land—*"Sikhasti" *and* "payasthi"*—Meaning of.*

A putni patta contained the following clauses: "Profits and losses in consequences of drought or inundation, ...alluvion (*payasthi*), diluvion (*sikhasti*) etc., shall be yours ,..never on any account whatsoever shall you or your heirs or representatives be competent to claim any reduction of rent, however little, and we or our heirs and representatives shall not, on any account, be entitled to demand any additional rent over and above the fixed rent; if we or you do so it will be rejected."

Held, (1) that the words "*sikhasti*" and "payasthi" mean disjunction and junction of land by encroachment or recess of a river, that is to say diluvion and alluvion, that the word "payasthi" was used to cover all alluvial

of the covenantees and covenantors were them. (*Syed Nasim Ali and Henderson, JJ.*) PORE ZEMINDARY, LTD, *v.* CHANDRA SIN HORIA. 68 C.L J. 305.

——*Construction—Renewal clause—Perpetual right to renew.*

If the option in a lease does not state the terms of renewal, the new lease will be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof, except as to the covenant for renewal. Where however the terms of the lease made it clear that the tenants were to continue after the expiry of the term until there was a re assessment at the

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the tenant from claiming any reduction without a corresponding stipulation by the landlord giving up his right to claim enhancement, the rent of the tenancy is not fixed in perpetuity. The fact that the words "generation to generation" are in the lease is by itself of no significance, inasmuch as the rent of a heritable tenancy may not be fixed in perpetuity. (*Bartley and Nasim Ali, JJ.*) BAHADUR SINGH SINGHEE *v.* DY. 67 C.L.J. 512= A.I.R. 1938 Cal. 793.

erms of amount to cultivating

he tenancy are that the tenant is ce and a fixed sum which varied year but which is entered in jamabandis as certain amount, the terms of cultivation amount to a lease and not to cultivating partnership. (*Grille, J.*) GOVINDRAO BALWANTRAO *v.* RUMA ATMARAM. 177 I.C. 931=A.I.R. 1938 Nag. 314.

——*Covenant for renewal—Construction—Terms of renewal not stated—One renewal or perpetual renewal—If intended.*

Where in a lease there is a covenant for renewal, if the option does not state the terms of renewal, the new lease would be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof, except as to the covenant for the renewal itself. The leaning of Courts is always against perpetual renewals. In order to establish this construction the intention has to be unequivocally expressed. Otherwise the lessee is entitled to only one renewal for the same period as the original lease. (*Syed Nasim Ali, J.*) SRISH CHANDRA NANDI *v.* DOA MAHAMMAD BYAPARI. 68 C.L.J. 128.

——*Forfeiture—Covenant against assignment—Breach—What amounts to—Condition against assignment under-letting agreement of ent constitute me and entitle of covenant*

years granted by ined a covenant against at neither the lessee nor under the lessee should assign the lease or transfer any right or interest thereunder, or under-let the whole or any portion of the premises comprised in such lease without the assent of the Board of Revenue of Bihar and Orissa first being obtained, and that the penalty for infraction of this covenant should be forfeiture of the lease. In January 1933, the lessee, which was a company went into liquidation and on 30-9-1933, the lessee-company through its liquidators contracted with one *B* for sale of the leasehold rights under the lease subject to the sanction of the Board of Revenue; if sanction was not obtained the agreement was to stand cancelled *B* was, however, in the meantime to act as agent of the lessee in respect of the leasehold rights in the quarries, to pay to the lessee the royalties and any other sums payable by it to Government and to

LEASE.

Held, (1) that there was no sub letting by the lessee-company to *B*, there being nothing in the agreement pointing to a relationship of landlord and tenant between the company and *B*, (2) that the effect of the agreement was to give *B* an agency coupled with an interest—and it was not unusual to have an agency coupled with interest—though *B* was not to the lessee's agent in

forfeiture of the lease. (*Sir George Lowndes*) SECRETARY OF

CO., LTD

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10 R.P C ..

65 I.A. 45=17 Pat 69=172 I C. 443=47 L W 3=18 Pat L.T 1001=A.I R 1938 P C 20=(1938) 1 M L J. 209 (P.C.).

——*Lease for propagating lac—Subsequent lease in respect of same area to another for bringing jungle under cultivation—Leases, if consistent.*

It is open to a Zamindar to give a lease for propagating lac and subsequently to give a lease in respect of the same area to another for bringing jungle under cultivation. There is nothing inconsistent in the two

NOTICE TO QUIT

——*Power to grant—Donee in possession—Lease during pendency of suit to set aside gift on breach of a covenant—Suit though dismissed by trial Court, ulti-*

a trespasser.

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appeal, it is

suit by the trial Court could not render the possession of the donee over the gifted property lawful. The appellate decree relates back to the date of the cause of action with respect to which the suit is brought. As the donee was not in lawful possession, he was not compe-

LEASE.

NATHU RAM *v.* SALIG RAM. 1938 R.D. 251=1938 A.W R. (B.R.) 87.

——*Registration—Validity—Addendum signed only by lessee—Registration if proper.*

A registered lease, the terms of which regarding area, could be ascertained with certainty, did not name actually the villages affected. A list of those villages

lessor from contesting its accuracy. (*Stone, C J and* *J.*) MULJI SICKKA & CO *v.* NURMOHAM-

A.I.R 1938 Nag. 377.

newal clause—Renewal dependent on fresh *—Duty of landlord*

the execution of a fresh kabuliat by the tenant ent upon a fresh assessment, it is for the land- ake the fresh assessment and then call upon the tenant to exercise his option. In such a case the landlord before he can treat the lease as determined is bound to give notice to the existing tenant for exercising an option of renewal. (*S. K. Ghose and Edgley, JJ.*) PRODYOT COOMAR TAGORE *v.* MAYNUDDIN MIA.

68 C.L J. 435=A.I.R. 1938 Cal. 724.

——*Residential lease—Lease mentioning residence as its object—Land described as* 'bagat'*—Landlord using in litigation words appropriate to agricultural tenancy—Nature of lease.*

is one for residential purposes. (*Mukherjea, J.*) UDOYTARA SAHA *v.* HABIBAR RAHAMAN.

42 C.W N. 771.

——*Rights of lessee—Area of leasehold less than that stated in lease-deed—*Selami *and royalty—If liable to be reduced.*

Where no measurement took place at the time of the creation of the lease and the area which is mentioned in the schedule annexed to the lease-deed was taken for granted, and the lease-deed does not contain any provi-

(*S.K. Ghose and Patterson, JJ.*) KESHABJI LALJI *v.* PIRAMALL GAYENKA. 67 C L J. 521=42 C W N. 405.

——*Right to minerals—Grant of patni lease—Absence of covenant relating to working of minerals—*

demands imposed upon the proprietors in respect of the mine would not have brought income tax within the covenant; (4) that the words "taxes, rates, assessments and impositions whatsoever" are followed by the words "charged, assessed or imposed upon the said mines" a variety of phrase which is intended to avoid restricting the covenant to cases in which the demand is in the strictest sense 'charged upon the land'. The phrases are to be taken in their ordinary and natural meaning; (5) that the words "upon the said mines or any part thereof," did not refer to the interest of the lessees as distinct from that of the lessors. (*Sir George Rankin.*) BENGAL COAL COMPANY LTD. *v.* JANARDHAN KISHORE LAL. 42 C.W.N. 1098=176 I.C. 433=1938 M.W.N. 1264=1938 O.L.R. 347=68 C.L.J. 50=1938 O.W.N 906=11 R.P C. 60=48 L.W. 533=1938 A L R. 683=4 B.R. 811=A.I.R. 1938 P.C. 243=(1938) 2 M L.J. 410 (P.C).

——*Construction—Putni Patta—Additional rent for future accreted lands—Liability of patnidar—Covenant running with land—*"Sikhasti" *and* "payasthi"*—Meaning of.*

your heirs or representatives be competent to claim any reduction of rent, however little, and we or our heirs and ... tled to ... fixed ... asthi" ... hment or recess of a river, that is to say diluvion and alluvion, that the word "payasthi" was used to cover all alluvial lands whether reformation *in situ* or accretion and included future accretions also, and that, therefore, the putnidar was not liable to pay any additional rent for future accreted lands, ... the rent reserved for the ... the lease-hold as well a ... therefore, ran with the ... of the covenantees and covenantors were ... them. (*Syed Nasim Ali and Henderson, JJ.*) ... PORE ZEMINDARY, LTD. *v.* CHANDRA SIN... HORIA.

——*Construction—Renewal clause—P... to renew.*

the lease subject to the tenant consenting to assessment within a year and where only if the ... did not consent to such re assessment that the ... would have right of re entry and not otherwise.

Held, that the true meaning of the renewal clause in the kabuliat was not that the tenants were not entitled to one such renewal, but that they were entitled to such a renewal clause in all succeeding leases as a substantive

the tenant from claiming any reduction without a corresponding stipulation by the landlord giving up his right to claim enhancement, the rent of the tenancy is not fixed in perpetuity. The fact that the words "generation to generation" are in the lease is by itself of no significance, inasmuch as the rent of a heritable tenancy may not be fixed in perpetuity. (*Bartley and Nasim Ali, JJ.*) BAHADUR SINGH SINGHEE *v.* BHUPAL CHANDRA ROY. 67 C L.J. 512=A.I.R. 1938 Cal. 793.

——*Construction—Terms of amount to cultivating partnership.*

Where the terms of the tenancy are that the tenant is to pay half the produce and a fixed sum which varied apparently from year to year but which is entered in jamabandis as certain amount, the terms of cultivation amount to a lease and not to cultivating partnership. (*Grille, J.*) GOVINDRAO BALWANTRAO *v.* RUMA ATMARAM. 177 I.C. 931=A.I.R. 1938 Nag. 314.

——*Covenant for renewal—Construction—Terms of renewal not stated—One renewal or perpetual renewal—If intended.*

Where in a lease there is a covenant for renewal, if ... state the terms of renewal, the new ... he same period and on the same ... lease in respect of all the essential ... except as to the covenant for the renewal itself. The leaning of Courts is always against perpetual renewals. In order to establish this construction the intention has to be unequivocally expressed. Otherwise the lessee is entitled to only one renewal for the same period as the original lease. (*Syed Nasim Ali, J.*) SRISH CHANDRA NANDI *v.* DOA MAHAMMAD BYAPARI. 68 C.L.J. 128.

——*Forfeiture —Covenant against assignment—Breach—What amounts to—Condition against assignment, transfer of right or interest, or under letting without sanction of lessor—Unregistered agreement of sale by lessee subject to sanction—Agreement constitut... ne and entitl... of covenant*

... years granted by ... ined a covenant against ... at neither the lessee nor ... under the lessee should ... any right or interest there... or any portion of the pre... without the assent of the

work the quarries for his own profit. The contract though in writing was not registered. *B* entered into possession and worked the quarries upon the terms of the agreement of sale, but the Board of Revenue refused

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Held, (1) that there was no sub-letting by the lessee-company to *B*, there being nothing in the agreement pointing to a relationship of landlord and tenant between the company and *B*; (2) that the effect of the agreement was to give *B* an agency coupled with an interest—and it was not unusual to have an agency coupled with interest—though *B* was not to the lessee's agent in working the quarries; (3) that the agreement though it purported to invest *B* with a definite interest in the quarries and to that extent was a transfer of an interest, was not an effective transfer as it was inoperative for want of registration, and (4) that consequently there was no breach of the covenant which would entail a forfeiture of the lease. (*Sir George Lowndes.*) SECRETARY OF STATE *v.* KUCHIWAR LIME AND STONE CO., LTD. 32 S L R 276=42 C W.N. 593=1938 A.L J 72=1938 A W R. (P.C) 19=1938 P.W N. 1=1938 O L.R. 25=1938 A L R. 25=4 B R. 198 (2)=1938 M.WN. 145=1938 O W.N. 158=1938 R D. 214=66 C L J. 485=10 R.P C. 130=40 Bom.L R 292=1938 O.A 281=65 I.A. 45=17 Pat. 69=172 I C. 443=47 L.W. 3=18 Pat.L.T 1001=A.I.R 1938 P C 20=(1938) 1 M L J. 209 (P.C.).

———*Lease for propagating lac—Subsequent lease in respect of same area to another for bringing jungle under cultivation—Leases, if consistent.*

It is open to a Zamindar to give a lease for propagating lac and subsequently to give a lease in respect of the same area to another for bringing jungle under cultivation. There is nothing inconsistent in the two leases and if the subsequent lessee in clearing his land damages the trees of the previous lessee, the latter will have a remedy in the Civil Court but not in the Revenue Court (*Bomford, J. M*) RAGHUBIR *v* ASHRAF ALI 1937 R D 470

———Notice to quit *See* LANDLORD AND TENANT—NOTICE TO QUIT

———*Power to grant—Donee in possession—Lease during pendency of suit to set aside gift on breach of a covenant—Suit though dismissed by trial Court, ultimately decreed by appellate Court—Donee, if a trespasser.*

suit by the trial Court could not render the possession of the donee over the gifted property lawful. The appellate decree relates back to the date of the cause of action with respect to which the suit is brought. As the donee was not in lawful possession, he was not competent to execute a permanent lease of the properties con-

I L R (1938) All 441=11 R.A 17=1938 R D 463=175 I.C 902=1938 A L R. 497=1938 A L J. 333=A I R 1938 All 316.

———*Power to grant—Manager of family of co-sharers.*

The manager of a family has powers to give leases which are in the interest of the family. The rent must be a fair and reasonable rent. (*Bomford, J. M.*)

LEASE.

NATHU RAM *v.* SALIG RAM. 1938 R.D. 251=1938 A.W R (B.R.) 87.

———*Registration—Validity—Addendum signed only by lessee—Registration if proper.*

A registered lease, the terms of which regarding area, could be ascertained with certainty, did not name actually the villages affected. A list of those villages signed only by the lessee was appended to the lease on being required by the Registering Officer, who was of the view that the area was not sufficiently delimited.

Held, that the lease was properly registered, though the addendum was not signed by both the parties. No doubt the inclusion of the list would not preclude the lessor from contesting its accuracy. (*Stone, C.J. and Puranik, J.*) MULJI SICKKA & CO. *v* NURMOHAMMAD. A.I R 1938 Nag. 377.

———*Renewal clause—Renewal dependent on fresh assessment—Duty of landlord.*

Where the execution of a fresh kabuliat by the tenant is dependent upon a fresh assessment, it is for the landlord to make the fresh assessment and then call upon the tenant to exercise his option. In such a case the landlord before he can treat the lease as determined is bound to give notice to the existing tenant for exercising an option of renewal. (*S. K Ghose and Edgley, JJ.*) PRODYOT COOMAR TAGORE *v.* MAYNUDDIN MIA. 68 C L J. 435=A.I.R. 1938 Cal. 724.

———*Residential lease—Lease mentioning residence as its object—Land described as* 'bagat'*—Landlord using in litigation words appropriate to agricultural tenancy—Nature of lease.*

Where a lease expressly states that its object is to

tural tenancy, cannot alter the nature of the lease which is one for residential purposes (*Mukherjea, J.*) UDOYTARA SAHA *v.* HABIBAR RAHAMAN. 42 C W N. 771.

———*Rights of lessee—Area of leasehold less than that stated in lease-deed—*Selami *and royalty—If liable to be*

royalty fixed in the deed is not liable to be reduced. (*S.K. Ghose and Patterson, JJ.*) KESHABJI LALJI *v.* PIRAMALL GAYENKA 67 C L J 521=42 C W N. 405.

———*Right to minerals—Grant of patni lease—Absence of covenant relating to working of minerals—Lessors right to minerals declared—Sub lease to work*

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minerals, the lessee granted a sub-lease to work the mines. After the right of the lessors was declared, a suit was brought against the lessee to which subsequently the sub-lessees were also added, for damages, in respect of the coal wrongfully extracted. On a contention that the lessee was not liable for the wrongful extraction of coal by the sub-lessee it was, held that on the facts both the lessee and sub lessee wer[illegible]ly liable as joint

tort-feasors in respect of the working of the coal. (*Wort and Manohar Lal, JJ.*) MANGOBINDA SADHU *v.*

by tenant—Effect—Estoppel. *See* LANDLORD AND TENANT—TRANSFERABLE TENANCY. 17 Pat. 358.

———Validity of—Lease for cultivation during pendency of partition. *See* PARTITION—PROCEEDINGS FOR. 1938 R.D. 285.

LEGAL PRACTITIONER

See also (1) BAR COUNCILS ACT.
(2) LEGAL PRACTITIONERS ACT.

———*Admission—Point of law—Binding nature of.*

The fact that the counsel has waived the objection as to limitation does ... same, as counsel's ... binding. (*Dalip S* ... BANK OF INDIA LTD., LAHORE ...

———*Authority—Compromise.*

In the absence of a power-of-attorney a pleader is not competent to effect a compromise so as to bind his client. (*Din Mahomed, J.*) JARNAIL SINGH *v.* NARAIN KAUR 40 P.L.R. 664=A.I.R. 1938 Lah. 766.

———*Authority—Offer to be bound by special oath on behalf of his client—Propriety of—Special authority—Necessity*

Pleaders should be careful not to make any offer on behalf of their clients to be bound by any special oath except in the presence of the party or on express written authority to that effect. (*Pollock, J.*) LAXMIBAI *v.* BAJIRAO 172 I.C. 421=10 R.N. 207=A.I.R. 1938 Nag. 64.

———*Disciplinary action—Considerations—Conclusion of criminal proceedings—Presumption of correctness.*

taken against him is whether upon a perusal of the facts

moral turpitude. (*Roberts, C.J. and Dunkley, J.*) U KUN, BARRISTER-AT-LAW, *In the matter of.* A.I.R. 1938 Rang. 394

———*Disciplinary action—Conviction—Case sent to Bar Council for enquiry—Its duty.*

Where a legal practitioner has been convicted of a criminal offence and his case is sent to the Bar Council for enquiry to determine if any disciplinary action was called for, the Bar Council should merely record the conviction and should call on the legal practitioner to show cause why action should not be taken against him. It is not open t... practitioner. (... BARRISTER-A...

———*Duties—*

There is a ... profession, like the legal profession, to exercise care and due diligence in the persons whom they employ, and if they choose to employ a person known by them to be irresponsible without taking adequate steps to keep a

close personal check upon his actions, then they are themselves at fault and will become liable to be called to ... ONS *v.* ... g. 370.

... ay a Counsel a cer... m as his *munshi's* ... entitled to sue for his fee and also for the *munshiana.* (*Tek Chand, J.*) GOPI NATH *v.* KANCHI RAM. 40 P.L.R. 12 (1)=176 I.C. 751=11 R.L. 235 (1)=A.I.R. 1938 Lah. 306.

———*Misconduct—Acting for opposite party, though in different proceedings—Purchase of client's decree—Execution for an amount known to be in excess of what is due—If an offence under R. 13 of the Legal Practitioners Act.*

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be in excess of that which was actually due, amount to a grave professional misconduct. (*Leach, C. J. Varadachariar and Pandrang Row, JJ.*) P. LINGAMURTHI, *In re.* I.L.R. (1938) Mad. 399=1938 M.W.N. 220=10 R.M. 641=174 I.C. 44=47 L.W. 192=A.I.R. 1938 Mad. 276 (F.B.).

———*Misconduct—Conviction for criminal offence—Subsequent disciplinary action—Scope of enquiry—Advocate convicted of defamation—Disciplinary action—If called for.*

When criminal proceedings are taken against a pleader or an advocate and finally concluded, they must be taken to have been rightly decided, and the question to be determined in a subsequent enquiry as to whether the advocate or pleader ought to have disciplinary action taken against him is whether upon a perusal of the facts

victed of the offence of defamation, the High Court,

not ascertained the truth, should be careful not to aggravate the defamatory nature of the matter by lending their support to an implied acceptance of it without careful investigation into its nature. (*Roberts, C.J. and Dunkley, J.*) *In the matter of* AN ADVOCATE 1938 Rang.L.R. 125 (S.B.).

———*Misconduct—Suggestion to bribe an official—Proceedings due to a grudge—If an excuse.*

For a member of the Bar to suggest that an official or any one should be bribed, amounts to professional

———Professional misconduct—Advocate cited as witness for prosecution—If disqualified from appearing for defence. *See* CRIMINAL TRIAL—EVIDENCE. 48 L.W. 276=(1938) 2 M.L.J. 446.

LEGAL PRACTITIONER.

——*Solicitor—Lien for costs—Solicitor of next friend of minor plaintiff—Lien—If extends against minor—Change of next friend—Right to withhold documents from new next friend.*

Where a solicitor is engaged by the next friend of a minor plaintiff the client is the next friend and not the minor,

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does not exist against the minor. where, therefore, there is a change of next friend and a new next friend comes in, the solicitor engaged by the former next friend is bound to hand over to the new n

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his costs of the suit from the old n

not withhold the documents, etc.,

friend by pleading his lien. (*Beaumont, C.J., and Rangnekar, J.*) JHAVERY & CO. *v.* HIRACHAND GANGJI. I.L.R. (1938) Bom. 749=177 I.C. 727= 11 R.B. 117=40 Bom.L.R 694= A.I.R. 1938 Bom 418.

——*Unprofessional conduct—Advocate filing appeal on last day of limitation without sufficient stamp under agreement with client—Desirability of—Duty of advocate to refuse engagement in such cases.*

The filing of a memorandum of appeal on the last day of limitation without sufficient court fee, knowing full well that it is under stamped and hoping that the Court would be persuaded to accept the deficiency later is certainly not in consonance with the high traditions of the profession to which the advocate belongs An advocate who is approached by a client to so file an appeal should refuse to file it unless the full amount of the court fee was first paid. The High Court will not tolerate practice of this nature.

Per *Mockett, J.*—It is undesirable for practitioners to lend themselves to the practice of deliberately filing appeals under stamped (*Leach, C J., Mockett and*

was a man of 60 years and had till then an unblemished character.

Held, that though the above circumstances made the case distressing the Courts have a duty to the public and to the profession itself, and that that duty could

Tampering with witnesses—Removal from rolls.

pleaders. (*Roberts, C J. and Dunkley, J.*) *In the matter of* P, A LOWER GRADE PLEADER KYAUKSE 177 I C. 731=19 R R. 163=A I R. 1938 Rang 294

——Ss. 13 and 14—*Misconduct—Allegations amounting to criminal charge—Proper procedure.*

LEGAL PRACTITIONER'S ACT (1879), S. 13.

Where the allegations against a legal practitioner amount to a criminal charge, the proper procedure is to prosecute him criminally in the first instance before bringing proceedings under the Legal Practitioners Act. Otherwise he is likely to be prejudiced in as much as these are summary proceedings in the nature of a

——S. 13—*Misconduct—Money given to pleader for payment to arbitrator—Appropriation by him towards*

JJ.) B, A PLEADER, SIMLA, *In the matter of* 175 I.C. 29=10 R.L. 659=A I.R. 1938 Lah. 248.

——S 13—*Misconduct—Pleader suggesting bribery—Offences.*

For a legal practitioner to suggest that an official or any one should be bribed amounts to professional misconduct, and professional misconduct of a grave nature. The fact that bribes of this nature have been given by others is no excuse. The fact that proceedings in respect of such offence are instituted against a pleader as the result of a grudge makes no difference to the gravity of the offence, and cannot be pleaded in excuse (*Leach, C.J., Varadachariar and Mockett, JJ.*) N. G, PLEADER, MANNARGUDI, *In the matter of*.

I.L.R. (1938) Mad. 467=173 I.C. 1008= 10 R M. 665 (1)=39 Cr L J. 398= 1938 M W.N 219=A I R. 1938 Mad 264= (1938) 1 M L J 410 (F B).

——S 13—*Pleader undertaking responsibility for defalcations by his co-trustee—Disciplinary action if called for*

Where a pleader who is one of the trustees of an

trustee (*Roberts, C J and Dunkley, J*) U PO AUNG, HIGHER GRADE PLEADER, *In re*, 175 I.C 156= 39 Cr L J 543=10 R R. 466= A.I.R. 1938 Rang 158.

——S 13—*Unprofessional conduct—Pleader appear-*

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plication for execution in respect of his decree against his mother. On 18-1-1935, he filed a memorandum on behalf of the mother in the maintenance decree showing several payments which had been made by the son (petitioner) towards the decree obtained by his mother; the amount shown as still due under the decree was not,

making an adjustment in respect of a payment made by the petitioner

Held, (1) that P.L., was not guilty conduct in filing an execution petition decree, and there was nothing profes his acting for the petitioner against h petitioner's suit had nothing to do suit, (2) that the pleader was, however, guilty of unprofessional conduct in having instituted execution proceedings against his own client (the petitioner) with full knowledge of the real position and in having obtained a larger sum than was in fact due by him, (3) that the

Act prohibiting practitioners from their clients or others any interest in by the Court in which they practise *Varadachariar and Pandrang Row,* MURTHI, *In the matter of* I.L.R. (1
47 L.W. 192=10 B.M. 641=174 I.C. 44= 1938 M.W.N. 220=A.I.R. 1938 Mad. 276 (F.B.).

——S. 13—*Unprofessional conduct—Pleader working for party in respect of property—Allowing own father to purchase same property and appearing for*

which he has been advocating in a Court of justice, or when a pleader intends appearing against a man in a case which is directly against the case which he was advocating for him before, it is desirable that he should give a formal notice to his late client and bring the matter to the notice of the Court, if for no other reason, at least to save himself from being charged by the client in future. A Hindu pleader allowed his father to pur-

of the sale transaction, he did not raise any objection against the conduct of the pleader for more than 18 months.

Held, that though the pleader did not act up to the standard of propriety which was expected of a member of the legal profession, who must enjoy the complete confidence of the litigant public and the Court, and though technically his appearing subsequently against him was improper, yet no disciplinary action was justified. (*Courtney-Terrell, C. J. James and Mahomed Noor, JJ.*) QURBAN ALI KHAN *v.* G. A.,

LEGAL PRACTITIONER'S ACT (1879), S. 13.

PLEADER. 172 I.C. 849=1938 P.W.N. 115= 4 B.R. 192=10 B.P. 357 (2)=30 Cr.L.J. 222= A.I.R. 1938 Pat. 28 (S.B.).

——S. 13 (b) and (f)—*Pleader entering record-room without permission of Judge in charge in defiance of standing order of District Judge—Propriety—Duty of*

When there is a standing

public or pleaders are strictly obeyed. (*Courtney-Terrell, C.J., James and Manohar Lall, JJ.*) KARUNA KANT PRASAD, PLEADER, *In re.* 17 Pat. 261= 178 I.C. 896=4 B.R. 787=11 R.P. 126= A.I.R. 1938 Pat. 385 (S.B.).

—*Em-*

profes-

have two registered clerks, but does not insist that any clerk should be registered. (*Leach, C.J., Gentle and Krishnaswami Aiyangar JJ.*) G. S. PLEADER, CHICACOLE, *In re.* 1938 M.W.N. 961= 48 L.W. 653=A.I.R. 1938 Mad 965= 661 (F.B.).

receiving

offence as perty may a pleader. R GRADE I.C. 126= 541 (1)= A.I.R. 1938 Rang. 160.

——S. 13 (f)—*Conviction for—Offence under S. 377, I. P. Code—Offence committed in early life—If a disqualifying circumstance—Non-disclosure of offence when applying for admission—Propriety.*

An offence of the character of one under S. 377, I. P. Code, committed by a pleader or advocate cannot be ordinarily condoned. Where, however, the offence was

his admission as a pleader, when required to give all necessary information at the time of his enrolment, he commits another serious offence of deceiving the authorities and the High Court is entitled to take him to task for it. Persons applying for being admitted to be pleaders should fully and frankly disclose all the circumstances of their past career with the knowledge that the High Court would take into consideration every matter which ought properly to be dealt with by it. (*Roberts, C. J. and Dunkley, J.*) T. K., A HIGHER GRADE PLEADER, *In the matter of.* 175 I.C. 124=

LEGAL PRACTITIONER'S ACT (1879), S. 14.

10 R.R. 465 (2)=39 Cr.L J 540= A.I.R. 1938 Rang 159.

——S. 14—*Duty of High Court—Unprofessional conduct—Practitioner betraying trust and confidence reposed by client—Disciplinary action.*

Where a legal practitioner commits a serious breach of trust in violation of the confidence reposed in him by

discharging his duties faithfully like persons of trust and honour, has betrayed the trust, such conduct must be severely dealt with. (*Courtney-Terrell, C.J., James and Manohar Lall JJ.*) A. B. A MUKHTEAR, *In the matter of.* 17 Pat. 96=172 I C. 877=4 B R. 184= 10 R.P. 363=39 Cr.L J 203=18 Pat L.T 961= A I.R. 1938 Pat. 17 (S B.)

——S. 14—*Jurisdiction—Unprofessional conduct—Charge of—Jurisdiction to initiate and draw up proceedings in respect of act committed in matter before another Court.*

If a pleader or a mukhtear practising in a Court

pleader or mukhtear practises has ample jurisdiction to initiate proceedings, though the particular matter in reference to which he commits the act complained of might not be before that

J, James and Manohar
TEAR, *In the matter of.*
4 B R. 184=1
18 Pat L.T. 961

——S 14—*Procedure*
up charge and holding
made out and no report
proceedings—District Judge disagreeing with finding—Proper course—Reference of proceedings without fresh proceedings and without recording of evidence—Competency—Powers of High Court

Subordinate Court, he is at liberty to draw up fresh

the High Court. It is also open to
draw up fresh proceedings and then
matter after giving notice to the
hearing his defence, if any. (*Courtney-Terrell, C J, James and Manohar Lall, JJ.*) KARUNA KANT PRASAD, PLEADER, *In re* 17 Pat. 261=

LETTERS PATENT (Bombay), Cl. 15.

176 I C. 896=4 B.R. 787=11 R P 126= A.I.R 1938 Pat. 385 (S B.).

——S. 36—Jurisdiction of District Court—Nature of—Order declaring person to be tout—Revision—High Court's jurisdiction. *See* C.P. CODE, S 115.

(1938) 2 M.L J 100.

——S 36—Order declaring person tout—Revision—Power of High Court. *See* C. P. CODE, S. 115.

47 L W. 578.

LETTERS PATENT (All.) Cl. 10—*Refusal to set aside abatement of second appeal by single judge—If a 'judgment'—Leave—Necessity.*

An appeal under cl. 10 of the Letters Patent (All) does not lie, against an order of a single judge refusing to set aside an abatement of a second appeal, for it does not amount to a judgment within the meaning of the clause. If it amounted to judgment, then only would leave be necessary. (*Bennet, A. C. J and Verma, J*) LAXMI NARAIN *v.* MOHAMMAD AKBAR.

1938 A.W R. (H C) 774=1938 A L J. 1107.

——(All) Cl 27 and C. P. Code, (1908), S 98—*Difference of opinion among judges hearing first appeal—Procedure to be adopted.*

note made payable in Poona, Bombay or elsewhere—Place of payment—Option—If rests with creditor or debtor—Demand by creditor to pay in Bombay—Effect—

demand not having been complied with, the plaintiff applied to the High Court for leave to sue the defendant in Bombay

Held, that the promissory note was payable any-

176 I C 760=40 Bom L R 252= A I.R 1938 Bom. 278.

, Cl 15—*Judgment—Order on orig-*
side abatement of suit—Appeal—C. P.

dge of the
an abate-
Such an
t affect the
merits of the dispute between the parties so as to be appealable under Cl. 15 of the Letters Patent (*Beaumont, C J. and Wadia, J.*) M. F. ALMEIDA -

LIMITATION.

NARAYANA CHETTYAR.

——— *Determining factor.*

Per *Stone, C.J.*—In consideri
remedy is barred one looks n
at the cause of action, that is,
tions which have to be made an
sought can be given. (*Stone, C J. Bose and Digby, JJ.*) ASARAM *v.* LUDHESHWAR. 177 I.C. 6= 11 R N. 109=A I.R. 1938 Nag. 335 (F B.).

——— *Extension of time—Right of auction-purchaser—Order of executing Court referring him to regular suit—Fresh start.*

Anything done behind the back of a debtor does not tend to extend the period of limitation originally provided for the recovery of a debt under the Limitation Act. One *R*, along with three other persons, obtained a contract from the Municipal Committee and the firm in whose name the contract stood deposited certain sum with the Municipality by way of security. Subsequently one *S* instituted a suit for recovery of some money against *R* in his individual
decree in execution of which
amount lying in deposit with
amount was purchased by *B*.
other partners of the firm in whose name the contract had been obtained instituted a suit against the Municipality for recovery of the deposit money and obtained a decree Throughout the pendency of
no attempt to be brought on record as
ever instituted a suit for recovery of
against the Municipality on the basis o
R's rights in the deposit money. The suit was beyond the period of limitation.

Held, that *B* could not claim extension of limitation period. Had *R* put forward a claim against the Municipal Committee for recovery of the deposit amount he could sue only within period prescribed for the suit His rights were in execution of his decree purchased by *B* who as assignee from *R* stood in his shoes and could not by the mere fact of his purchase override the provisions of the Limitation Act. It could not be argued that once attachment of the an
Limitation Act ceased to oper
auction purchaser, was at liberty
at any time he liked in complete
sions of the Limitation Act. M

Din Mohammad, JJ) ISHAR DAS *v.* RALLIA RAM 40 P L R. 768=A.I R. 1938 Lah. 437.

——— Order on time barred application—Legality. *See* C. P. CODE, O 20, R 11 (2). 1938 A M L J. 86.

calculated strictly under such circumstances.
S.M. and Bomford, J.M) DWARIKA
MUZAFFAR HUSAIN. 1938 E
1938 A.W R. (

——— *Starting point—Decree holder taking in discharge of his decree—Mortgagor covenanting to repay debt 'on demand'—Money, when becomes payable.*

LIMITATION ACT (1908), S. 3.

the deed, namely, when demand was made upon the mortgagor to pay. (*Gentle, J.*) BALASUBRAMANIA CHETTY *v.* MANICKA CHETTIAR 1938 M.W.N. 113= A.I.R. 1938 Mad. 429.

LIMITATION ACT (IX OF 1908)—*If exhaustive—Considerations of expediency—If can affect interpretation.*

The Indian Limitation Act is an exhaustive Code in itself and effect must be given to its provisions unhampered by questions of expediency and the like. (*Stone, C.J. and Bose, J.*) RAJARAM *v.* PAIKU. 1938 N.L J. 336=A.I.R. 1938 Nag. 534.

——— *Applicability—Suits and applications under Agri Tenancy Act.*

Act do not
by the Agra
AKHRUDDIN
1938 A.W.R. (H C.) 145=1938 R.D. 367= 1938 A L J. 208=175 I C 20=10 R.A. 644= 1938 A.L.R. 374=A.I.R. 1938 All. 213.

under Co-operative
te—Limitation.
award under the
falls within S. 3 of the Limitation Act and the Limitation Act, is applicable to such an application. (*Rangnekar and Wadia, JJ*) MARATHA CO OPERATIVE CREDIT BANK OF DHARWAR *v.* KASHAV TRIMBAK HUNDE. 40 Bom. L.R. 889=177 I C. 897= A.I R. 1938 Bom. 424.

——— *S. 3—Presentation—Validity of—Execution application—Presentation to proper officer beyond Court hours on last day of limitation—If valid presentation.*

perly exercis-
presented to
ation on the
the presentation is valid. No ratification by the Judge is necessary for such presentation. (*Puranik, J*) KISANLAL RAM NIWAZ *v.* NARAIN. 174 I.C. 597=10 R.N 404= A I.R. 1938 Nag. 46.

——— *Ss 3 and 9—Scope and effect of—Exhaustive*
quit-
itable-
of the
have
provisions. (*Rangnekar and Wadia, JJ*) NARAYAN *v.* GURUNATHGOUDA. 40 Bom. L R. 1134.

LIMITATION ACT (1908), S. 3.

——Ss. 3 and 2
mosque—Limitation
Continuing wrong.
Per *Young, C.J*
contra).—S. 3 of th
suit and provides
wakfs, religious i
dedicated to sacred uses. A suit relating to a mosque is, therefore, subject to the law of limitation and prescription laid down in Art. 144 and S. 28 of the Limitation Act. If the Sikhs have been in adverse possession of a mosque for over twelve years, the Muslims lose all rights in the land and building, including the right of worship The Sikhs on the other hand by virtue of S. 28 of the Limitation Act obtain a good title to the land and building thereon and have full rights therein as owners. There is no duty cast on the Sikhs to maintain its original sacred character, or to maintain it as a building. If, therefore, the Sikhs demolish the building of the mosque after the perfection of their title by

175 I.C 945=11 R L 91=
40 P.L.R. 319=A.I R 1938 Lah 369 (F.B.)

——S 3, Expl —Plaint presented on last day of limitation with insufficient stamp—Return for payment of full Court fee fixing time—Further request for time granted—Payment of full Court-fee within ti granted—Effect—Suit—If barred. *See* C P. S. 149 AND O. 7, R. 11. 1938 M.W N

——S 4—*Applicability—Application for* *decree.*
Even if it be assumed that the application for obtain-

The provisions of S 4 of the Limitation Act are quite general and apply to an application under S 12(2) of the Oudh Courts Act, (*Zia ul Hasan and Yorke, JJ.*) RAM DAS *v* CHEDI I
1938 O A
1938 O.L R 359=

——S. 4—Applicability an
—Last day of limitation expiring on Sunday—Payment of interest next day—If saves limitation. *See* LIMITATION ACT, S 20. 47 L.W 726.

——S 4—*Applicability—Execution transferred to Collector and sale by latter—Application to set aside sale—Limitation expiring on holiday of Civil Court—Application made on reopening date—If in time—Court*

LIMITATION ACT (1908), S. 5.

pired does not make S. 4 inapplicable. O. 21, R. 91 A framed by the Bombay High Court is plainly conditional, and does not compel an applicant to make his application to the Collector rather than to the Court, which has transferred the execution to the Collector. (*Beaumont, C.J*) VEERAPPA *v.* IRATAPPA.
40 Bom.L R 152=175 I.C 221=10 R B 529=
A I R. 1938 Bom. 209

——Ss. 4 and 20—*Promissory note getting barred during vacation—Endorsement of payment after date of limitation, but during holidays—If gives a fresh start of limitation.*
The endorsement of payment at the back of a promis-
but
not
4 of
J.)
72=
1938 A L R. 870=1938 A L J 1183=
A I R. 1938 All 606.

——S. 4—*Scope and effect.*
All that S 4 provides is that the suit might be brought on the day when the Court reopened if the Court happened to be closed when the period prescribed expired. The words of S 4 do not extend limitation. (*Coldstream, Dalip Singh and Din Mohammad, JJ*) SHANTI PARKASH *v.* HARNAM DAS
I L R 1938 Lah. 193=174 I.C 277=10 R L 540=
40 P.L R 533=A I R 1938 Lah 234 (F B.).

or filing appeal expiring
for copies made on re-
or obtaining copies—If
on holiday—Appeal, if
See LIMITATION ACT,
SS 12 AND 4, 40 P L R 74.

of superior Court to interfere.
Under S 5 of the Limitation Act, the Court has a discretion to excuse the delay or to refuse to excuse it Such discretion should be exercised judicially and not in an arbitrary manner The superior Court has power to interfere with a wrong exercise of discretion by the Subordinate Courts in such cases both in its revisional

GUNAND JHA 17 Pat. 507=19 Pat L T. 309=
177 I C 564=4 B R 841=11 R P 161=
1938 P W N 818=A I R 1938 Pat 413.

——S 5—*Extension of time—Duty of Court.*
The period for preferring an appeal cannot be exte ed simply because the appellant's case is hard an for sympathy, nor will the Courts extend the

I.L.R. 1938 Nag. 409=173 I.C. 369= 10 R N. 302=A.I.R. 1938 Nag. 156.

——S. 5—*If can be invoked for the first time in*

to attend Court as per Court's direction.

An appeal was filed by a counsel on behalf of one *S.* During the hearing of the appeal the signature on the power-of-attorney was doubted. The counsel filed certain affidavits the purport of which was that power of attorney had been signed by *S* in blank at the time he started the li

bearing his sig

who had enga

and the signat

in the Court,

convenient to

W asked the

the counsel's

allow *W* to sig

defeat the

S did not appear the Court dismissed the appeal under O. 41, R. 17, C. P. Code.

Held, that the Court had discretion to direct the personal appearance of *S* in order to satisfy itself as to the genuineness of his signature.

Held further, that the non-appearance of *S* because it did not suit his convenience was not a reasonable cause for employing S. 5, Limitation Act. (*Mackney, J.*) KONG HIP LON & CO *v.* C. A M.A.L. FIRM

177 I C 364=11 R R. 116=A.I R 1938 Rang. 214

——S. 5—*Sufficient cause—Applicatio appeal to Privy Council—Non-present owing to agreement between parties to end*

Where an application for leave to appea Council is not presented within the time law owing to an agreement between the the opposite party not to continue the liti as the parties had incurred enormous ex accept as final the decision of the High opposite party goes back on the agreemen

under S. 476 B., Cr. P. Code—Ignorance of filing of complaint. *See* LIMITATION ACT, ART. 154 AND S. 5.

1938 N L.J. 183

——S 5—"*Sufficient cause*"—Ex parte *decree—Proceedings to set aside in trial Court and appellate Court—Subsequent appeal from* ex parte *decree—Right to extension of time for appeal.*

The fact that an appellant appealing from an *ex parte* decree against him took proceedings both in the trial Court and in the appellate Court to set aside the *ex*

cannot be held to constitute "sufficient

the meaning of S. 5 of the Limitation

entitle him to an extension of time for

ne appeal. (*Rangnekar, J.*) JOTIBA *v.*

40 Bom.L.R 957=178 I C. 307= A I.R. 1938 Bom. 459.

——S. 5—*Sufficient cause—Mistaken advice of counsel—If ground for excuse of delay.*

a competent lawyer would be a

e meaning of S. 5 of the Limi-

e operation of the section, it is

mistake of the lawyer was of

may arise even amongst legal

ice. A litigant should not be

error or mistaken advice given

by counsel. (*Dhavle and Manohar Lal, JJ.*) NRISINGHA CHARAN NANDEY *v.* TRIGUNAND JHA.

17 Pat 507=19 Pat.L T. 309=177 I.C. 564= 4 B R. 841=11 R.P. 161=1938 P.W.N. 818= A I.R. 1938 Pat 413.

——S. 5—*Sufficient cause—Mistake of legal adviser.*

or want of reasonable skill, but such as even a skilled person might make. It is only in the latter case that the litigant would be allowed the benefit of the section. (*M N. Mukerji and S. K. Ghose, JJ.*) PHANI BHUSAN PAL *v.* SM. NALINIBALA DASI. 67 C.L J. 107.

——S. 5—*Sufficient cause—Mistake of pleader.*

A mistaken advice of counsel is not sufficient to justify extension of time being granted under S. 5 unless the advice was given in good faith that is, with due care and attention. In a case the value of the subject-matter of

=A I R. 1938 Lah. 81.

istake of pleader.

without due care and

the advice of such a

pleader is not entitled to the benefit of S. 5 of the Limitation Act. (*Bose and Puranik, JJ*) KRISHNA RAO *v.* TRIMBAK. I.L R 1938 Nag. 409=173 I C 369= 10 R.N. 302=A.I R. 1938 Nag. 156.

——S. 5—*Sufficient cause—Wrong information given by pleader's clerk.*

Where the appellant was misled by the wrong information given by his pleader's clerk as to the date of the re-opening of the Court and presented the appeal after the period of limitation,

LIMITATION ACT (1908), S. 6.

Held, th.
was given ...
and that a ...

—*Rights.*

Where ma
alienation by
the alienatio
suit by other
tion, to set a
is also not
alienation.

an after born reversioner ...
after born reversioner cannot claim the benefit of S. 6, Limitation Act, in his own right, he cannot be deprived of the benefit of the extended period claimable by the

...

ed by an assignee of ...
benefit in a suit where both the assignor and assignee join in the suit as plaintiffs, so long as the assignor has a subsisting right to sue at the date when the suit is brought, although the benefit would not be available had the assignee alone brought the suit (*Divatia, J*) BANDU ANNAJI *v* YESHWANT RAMRAO

40 Bom.L R 548=177 I C 475=11 R B 87= A I.R 1938 Bom 358.

——S. 7—*Applicability—Decree in favour of karta, his son and grandson, a minor—Execution application filed more than three years after decree—Inhibition under O. 32, R. 6—If can be invoked.*

LIMITATION ACT (1908), S. 7.

... his son and
... ecution was
... a question
... y reason of

... 11 R.P 179.

... brothers. (*Barlee and Macklin, JJ.*) SURESH CHANDRA *v* BAI ISHWARI. 40 Bom.L.R. 127= 174 I C. 820=10 R B. 493=A.I R. 1938 Bom 206.

—*Applicability—Hindu joint family consis-*
...o minor brothers—Alienation by mother as

...

BHIKARCHAND *v.* LACHHMANDAS.
... L.R 521=177 I C 286=11 R B 71= A I R 1938 Bom 392.

–*Family business—A and B Proprietors ...r represented by certificated guardian—Power of A to give valid discharge*

A and *B* were proprietors of a family business in two equal shares *B*, who was a minor, was represented by a guardian appointed under the Guardians and Wards Act A suit was filed by *A* and *B* for money due on account of price of goods supplied by their firm, within three years of the date on which *B* attained majority The claim in suit was admittedly made about 14 years after the transaction in question

Held, that *A* was not in the position of a managing member of an ancestral joint family business, who ... competent to represent *B*, who had a certificated

dian, and he was not, therefore, competent to give any valid discharge as contemplated by S. 7 of the Limitation

DAI BIBI. 67 C.L J. 88.

——S. 7—*Joint Hindu family—Eldest of several*

major, and cannot give a valid discharge without the concurrence of tl
latter under S. 7
and Sen, JJ.)
BASAPPA 40 B...

——S. 10—*Applicability—Conditions—Suit against*

LABHJI. 176 I

——S. 10 and Art. 48—
ment to temple deity—High pri...
bonds vested in idol—Suit by high
of late high priest for recovery o,
or their value—Limitation.

Art. 48 of the Limitation Act ...
detinue. In the case of a Hindu Religious Endowment which is a gift directly to an idol or temple, the

i e., the man
nor is he a
although in
him, he is a
maladministration. The p
deity, no description giver
the nature of endowment.
meaning of S. 10 of the
manager of the endowment, is concerned. The plaintiff,
the present high priest of a t
against the widow of the late l
of certain war bonds belongin
substitutes, in the possession of
alternative for recovery of Rs
the said bonds, in case the delivery of the war bonds or their substitutes could not be bad.

Held, that the action was one in *detinue* and was governed by Art. 48 of the Limitation Act and that S. 10 of the Act did not apply, as there was no trust within the meaning of S. 10 and t
not a person in whom the property
(*Wort and Manohar Lall, JJ.*)
BAIDYA NATHJI.
176 I.C. 209=4 B R.
A I

——S. 10—*Applicability—Entrustment of money for purpose of investment.*

f the Limitation Act applies to a case of en-
of money for the specific purpose of invest-
Jack, J.) KALIPADA BHATTACHARJEE *v.*
. IMAR PAL. I.L.R. (1938) 2 Cal. 81=
42 C.W.N. 381=66 C.L J. 541=11 R.C. 148=
176 I.C. 681=A.I R. 1938 Cal. 336.

——S. 10—Applicability—Executor under will—If express trustee—Suit for arrears of annuity made expressly payable under will and descendible in male line generation after generation—Limitation. *See* LIMITATION ACT, ART. 123. 1938 P.W N. 186= 19 Pat L.T. 202.

ity—Mokhasa *in certain zamin-*
ider Cl. 6 of S. 34, Madras
Zamindars sold for arrears and
—Government resumed mokhasa
and writing off arrears—Regrant unconditionally to

arrears. As they
to the zamindar
ditionally to the
From that time
zamindar was holding the *mokhasa* in his own right free and discharged all claims of the *mokhasadars*. The resumption proceedings were with the knowledge of the
ie same and aban-
and the conduct of
with that view. An
possession of the
ought in 1927 for
he original entry on
trustee and the suit

by attachment of
ustee and *cestui que*
there was a fiduciary relation
end by the resumption of the
nent writing off the arrears and
o the zamindar who held the

running from the date of disclaimer or renunciation. The suit therefore was time-barred. (*Venkataramana Rao, J.*) SESHAGIRI RAO *v.* VENKATARAMAYYA APPA RAO BAHADUR. A.I.R. 1938 Mad 295.

LIMITATION ACT (1908), S. 10.

any specific words but which the law would imply from the existence of particular facts or fiduciary relations are excluded from the operation of the section. One useful test for determining whether any particular trust is within the provisions of the sectic
for the purpose of following
hands of the trustee would
(*Biswas, J.*) KALI PADA D
I.L.R. (1938) 1 Cal.

——**S. 10**—*Applicability*
Trustees *de son tort* woul
of S. 10 of the Limitation
trust must be first established before the section may be applied against them. (*Bis*
HARI DASI DASI.

——**S. 12**—*Applicabilit*
for obtaining copy of deci
deduct—Application for co
expiry of time for appeal.

the Court was asked to dispense with. The Court on 19—2—1937, dispensed with the copy of the judgment, but refused to dispense with a copy of the decree. A copy of the decree was applied for on 23-2-1937, obtained on 1—3—1937 and filed on the same date.

175 I.C. 508 = 10 R B. 563 = A I.R.

——**S. 12**—Applicability—Suit agai
annulment—Time taken in obtaining
of annulment—If can be excluded. *S*
INSOLVENCY ACT, S. 78. **1937 A. M L J. 101**

——**S. 12**—*Computation of time—Different applications for copies of Judgment and decree—Application for copy of decree filed after expiry of period of limitation for appealing—Time taken to get such copy, if can be excluded*

Where there were two different applications on two different dates for copies of Judgment and decree, the time taken in obtaining the copy of the decree, can be excluded for purposes of computing the period of limitation even though the application for such a copy was filed after expiry of the time allowed for filing appeals, provided that it was in time after taking into calculation the time take
(*Darling, S*
RAM DATTA

——**S. 12**
getting copies
In calculat
appeal, time
ment of the a
be excluded
Rashid, J.)

——**S 12**
taken for obt
can be exclud

LIMITATION ACT (1908), S. 12.

In computing the period of limitation for a second appeal to the Commissioner against an order of the Collector, the time required in obtaining the copy of the order of the first Court should be excluded, provided that
in the period of
fails to make the
scribed period of
the time required
which he
by time.
BABU *v.*
(B R.) =
1938 R D. 78.

If the days deductible as time
oliday, the appeal filed on the
within time under S. 4 of the
hand, J.) ASA SINGH *v.* HIRA
SINGH. **40 P L R. 74 = 177 I C. 672 = 11 R.L. 351 = A. I R. 1938 Lah. 317.**

——**S. 12**—*Time "requisite"—Computation of—Day on which copy is notified ready—Exclusion of.*

In computing the time requisite for obtaining copy
S. 12 of the Limitation Act, the day on which

Holidays—If may be deducted.

An application for copies was made on 6—2—1934 and copying was stopped for want of correct information on 8—2—1934 The correct information was received on 11—2—1934, but as 11—2—1934 and 12—2—1934 were holidays, the information was supplied on 13—2—1934

Held, as the information could not be supplied on the 11th and 12th February, being holidays, the applicant was entitled to deduct the 11th and 12th February as being part of the time requisite for obtaining copies (*Pollock, J*) B K. RAI *v.* THUMAN SINGH
I L R 1938 Nag 342.

LIMITATION ACT (1908), S. 12.

DAS. I.L.R. 1938 All. 209 = 1937 A.L.J. 1279 = 1937 A.W.R. 1192 = 174 I.C. 50 = 1938 A.L.R. 245 = 10 R.A. 531 = A.I.R. 1938 All. 106.

——S. 12 (2)—*Time requisite—Day on which copies are ready—If to be excluded—Delay of one day—Duty of Court to excuse.*

JJ.) RAICHAND v. RAHI NAVA. 40 Bom L.R. 1211.

——S. 12 (2) and S. 5—*Time requisite—Meaning*

INDRABAHADURSIN

177 I.C. 538 = 11

——S. 12 (2)—"T

of judgment and date of signing of decree—Right to

time requisite for obta

S. 12 (2) of the Limit

has not applied for

period (*Wort, A C.J*)

HESHWAR MAHTO. 1938 P.W.N. 781.

——S. 13—*Defendant in Secunderabad cantonment Extension of time—If can be claimed.*

Extension of time under S. 13 of the Limitation Act cannot be claimed on the ground of absence of the defendant in Secunderabad cantonment, as it is under the administration of the Government of India. (*Jai Lal and Dalip Singh, JJ*) RISALDAR ALI SHAN KHAN v. AHMAD NAWAZ KHAN. 40 P.L.R. 92 = 176 I.C. 255 = 11 R.L. 212 = A.I.R. 1938 Lah. 225

——S. 14—*Applicability—Decree in suit under O. 21, R. 103, C. P. Code, setting aside order adverse to purchaser made under O. 21, R. 99—Execution—Delivery*

LIMITATION ACT (1908), S. 14.

ves on 22—3—1922. Having been resisted by the defendant-appellant, a third party, in their attempt to take possession the plaintiffs took proceedings under O. 21, R. 97, C. P. Code, the decision was against them and in favour of the defendant. The plaintiff therefore brought a suit under O. 21, R. 103, C. P. Code, in 1926,

by the defendants after the plaintiffs had been put into possession by the process-server in execution of the writ of 1930, and that the fresh taking of possession by the

the period of

bringing the

recover pos-

session, and that even if 1919 be taken to be the point

started, the suit was not

time, (3) that the earlier decision was not a decision which made the question of present possession a matter of *res judicata*, because delivery of possession was made as a consequence of the decree in that suit; and the subsequent possession was held to have originated subsequently to the service of that writ. Consequently there could be no question of *res judicata* on the basis that this matter had been litigated or might have been litigated in the earlier suit. (*Courtney-Terrell, C. J. and James, J.*) GAJANAND MARWARI v. NONIDH LAL. 1938 P.W.N. 307 = 19 Pat L.T. 250 = 174 I.C. 630 = 4 B.R. 470 = 10 R.P. 538 = A.I.R. 1938 Pat. 321.

that the cause of action had not accrued, it cannot be said that S. 14 will not apply. (*Rangnekar and Wadia, JJ.*) MANEKLAL *v.* SHIVLAL

40 Bom. L. R. 1169.

——S. 14—*Applicability—Party not described as plaintiff or applicant in previous proceedings—Right to exclusion of time.*

the previous civil proceedings in good faith, and if he proves that he may avail himself of S 14, even though he was not described as a plaintiff or as an applicant in the previous proceedings Where an award was made under the Arbitration Act in favour of the plaintiff, and the arbitrator on being requested by the plaintiff filed the award in the Court and upon that Court holding that it had no jurisdiction to entertain the award the plaintiff presented the award in another Court.

Held, that the time taken in the former Court for ascertaining whether it had jurisdiction to entertain the award or not, should be excluded, so long as that Court was determining upon the question whether the award should be taken off the file on the plea of jurisdiction or not, the award was enforceable as a decree No proceedings could be taken in any other Court for the purpose
limitation r
was capable
and the pla
a Court of justice. (*Rupchand Bilaram, Ag. J C. and Dadiba C Mehta, A. J C*) AILDAS MADHOWDAS *v.* SOBHOMAL PURSOOMAL 32 S L R 151=
174 I C 172=10 R S 246=A I R 1938 Sind 50

——S 14—Applicability—Prior suit in High Court—Plea by defendants of status of agriculturists—Suit withdrawn with liberty—Fresh suit—Period taken up by first suit—Right to deduct—C P Code, O 23, R 2—Scope and effect of *See* C. P CODE, O 23, R. 2. 40 Bom L R. 377

——S 14—*Applicability—"Prosecuting"—If includes defending a suit*

One essential condition for the application of S. 14 of the Limitation Act is that the plaintiff in the later suit must have been prosecuting with due diligence another civil proceeding Where the plaintiff in the later suit was a defendant in the prior suit, he cannot be said to have been prosecuting a suit or civil proceeding at the time Merely defending a suit is not, and cannot amount to, the prosecution of a suit. (*Rangnekar and Wadia, JJ*) NARAYAN *v.* GURUNATHGOUDA.

——S. 14—*Benefit of—Ava*
under Agra Tenancy Act throu
way of review—Failure—Suit
ancy Act—Benefit of time spent in review, if available.

Where there has been an ejectment by fraud and the remedy by way of review has failed and subsequently a suit under S 99 of the Agra Tenancy Act is filed, the benefit of S 14 of the Limitation Act is not available

LIMITATION ACT (1908), S. 14.

to the plaintiff to cover the time spent in the futile application for review. When a man takes one remedy and fails in the process, he cannot be allowed to have the benefit of S. 14 of the Limitation Act to enable him to use another remedy, whatever the reason for the failure of yet a third remedy. (*Darling, S.M. and Bomford, J.M.*) RAM PRASAD PANDE *v.* JAI BAHA-

PRASAD. I L R. 1938 All 192=1937 A.W R. 1186=1937 A.L J 1308=173 I.C. 461=1938 A L R 146=
10 R A. 483=A I R. 1938 All. 78.

——S 14—*Construction—Principles—Liberal construction.*

The principle is well settled that S. 14 of the Limitation Act must be liberally construed, and if on the facts of a particular case the Court finds that the plaintiff was prosecuting in good faith another civil proceeding against the same defendant founded on the same cause of action, the time taken up in such proceeding should be excluded. (*Rangnekar and Wadia, JJ*) MANEKLAL *v.* SHIVLAL. 40 Bom.L.R 1169.

——S. 14—*Discretion exercised by lower appellate Court—Interference by High Court*

The High Court will not interfere with the discretion
wer appellate Court under S. 14 of
when such discretion has not been
ly. (*Thomas, C.J., Zia-ul-Hasan*
JAGDEO PRASAD *v.* PEAREY LAL.
173 I.C 648=1938 O A 184=1938 O L R. 133=
1938 O.W N 257=10 R O 227=
A I R 1938 Oudh 100 (S B.).

——Ss 14 and 2—*Failure of suit owing to negligence of plaintiff—Prosecution, if in good faith—Right to deduction of time*

S 14 of the Limitation Act is not intended to apply where the first suit has failed owing to the negligence and laches of the plaintiff Where the plaintiff and his attorney were guilty of negligence in not having applied for leave to sue by reason of which the High Court was without jurisdiction to hear the case, it could not be said that the plaintiff was prosecuting that case in good faith within the definition given in S 2 of the Act (*Lort Williams and Jack, JJ*) GHISULAL GANESHILAL *v.* GUMBHIRMULL A I R. 1938 Cal 377.

——S 14—*'Good faith'—Meaning of.*

'Good faith' as used in S. 14 of the Limitation Act means 'exercise of due care and attention'. Where the circumstances are such as would justify either view as regards the value of the property, the plaintiff cannot be

1938 N.L J. 107=A.I R 1938 Nag 300.

——S. 14—*Indulgence under—When can be granted.*

Indulgence should be granted under S 14 of the Limitation Act only in cases where an error was an

wrong Court on counsel's advice—If a ground for claiming benefit of S. 14.

Generally negligence on the part of counsel cannot be relied upon by the litigant in order to support a plea that he was prosecuting an application 'in good faith' though in wrong Court. Where a decree in the nature of a foreclosure decree was passed by an Additional Subordinate Judge, but the application for making it final was made to another of co ordinate jurisdiction, on the advice of counsel, it was held that it was a case of gross negligence and hence the applicant was not entitled to the benefit of S. 14 of the Limitation Act. (*Hamilton and Yorke, JJ.*) RAM DUTTA *v.* MAHPAL SINGH.

If a claim by a person is fully satisfied, either by an agreement or by a decree of a Court, and if that satisfaction is subsequently annulled by another decree of Court, a fresh cause of action would accrue in favour of the claimant, apart from the question, whether the claimant can avail himself of S. 14 of the Limitation Act to deduct the time taken in the prior suit and proceedings. (*Rangnekar and Wadia, JJ.*) MANEKLAL *v.* SHIVLAL. **40 Bom. L.R. 1169.**

——S. 14—*Time to be deducted under—Calculation of—Plaint ordered to be returned for presentation to*

—Revision petition filed by plaintiff against order in claim case—Plaintiff's right to extension of time. *See* LIMITATION /

——S. 14 (2
Court—Exclui

There is no
a Court to ret... ... ...
has been filed in a wrong Court.
is filed before a Court which h
receive it, such Court would be ful
the application in exercise of its i
S. 151, C. P. Code. Where ther
for execution is filed on last day ...
faith in a Court which from defect of
unable to entertain it, and the applicatio
by that Court for presentation to the pro
the next day on which it is presented b
holder to the proper Court, the application ...
by limitation. (*Edgley, J.*) DEBI PROSANNA *v.* INDRA NARAIN. **A I R. 1938 Cal. 791.**

——S. 14 (2)—*Exclusion of time—Prosecution of unnecessary applications.*

certain applications which are entirely unnecessary, it cannot be said that the applications were prosecuted with due diligence or in good faith and the time spent in the prosecution of such applications cannot be excluded. (*Roberts, C. J. and Dunkley, J.*) HASANAR *v.* KANDAN CHETTYAR. **177 I C. 923 = 11 R R. 183 = A.I R. 1938 Rang. 318.**

——S. 15—*Applicability—Decree declaring plaintiff in possession of lands as sole owner and ordering defendant not to deprive plaintiff of his possession or to obstruct plaintiff in taking crops and ordering defendant not to receive rents—If stay of suit for possession by defendant—Right to deduction of time for subsequent*

the crops raised, and which orders the defendant not to accept or recc
held to operate
defendant or
filing a suit
when the plain...
junction or an order restraining the defendant from going to a Court of law and asserting his rights to possession of the property to which he may have been entitled. Such a decree cannot amount to an order staying the institution of a suit within the meaning of
... as to entitle the defen-
...ction of time under that
...ia, JJ.) NARAYAN *v.*
40 Bom L R. 1134.

...ecree against several
... pending against one—
... exclude in execution
...ON ACT, ART. 182,
1938 P.W.N. 397.

...ty — Ward of Court
...spect of trust property
...rds—Necessity—Period
of notice—Right to deduct. *See* MADRAS COURT OF WARDS ACT, S. 49. **1938 M.W.N. 435.**

the heir at law where the executor leaves a will, though the executor under the will declines to accept office. "Legal representative" would also include an heir. (*Pandrang Row and Venkataramana Rao, JJ.*) SIVA-

LIMITATION ACT (1908), S. 18.

holder fraudulently selling property not belonging to judgment-debtor—Suit by purchaser for refund of purchase-money—Decree-holder guilty of fraud subsequent to sale.

In execution of a simple money decree for arrears of rent, the landlord decree holder brought to sale the holding, describing it as the property of the judgment-debtor even though he was aware of
vestige of interest in the property was
judgment debtor on account of the tr
holding by the judgment debtor prior to h
only the decree-holder did this but he we
rents for some years after the sale from the auction-purchaser. On proceeding to take actual possession of the holding, the auction purchaser was obstructed by the real owner. Thereupon he brought a suit for possession but it was dismissed on the ground that the sale

suit against the decree-holder for the refund of purchase-money had and received by him to the use of the plaintiff on failure of the consideration. It was contended

years, it was really an act of fraud on his part which kept the plaintiff out of his right to institute the suit within the proper period of limitation. The plaintiff was therefore entitled to the benefit of S. 18, and the suit as brought by him was not barred, even though Art. 62 of the Act was held applicable to it. (*Nasim Ali and B. K. Mukherjea, JJ.*) CHAITANYA DAS BANERJEE *v.* RANJIT PAL CHOWDHURY
I.L.R. (1938) 1 Cal. 512=67 C.L.J. 16= A.I.R. 1938 Cal. 263.

——S 19—*Acknowledgment — Essentials—Endorsement by debtor acknowledging correctness of account—Sufficiency*

An acknowledgment for the purposes of S 19, Limitation Act, need not necessarily contain a promise to pay, or amount to a promise to pay. The endorsement

the purposes of S. 19. (*Dhavle, J.*) RAMPRABHA

prior instrument—Sufficiency to keep alive debt.

The endorsement of cancellation on a prior promissory note at the time of execution
note for the amount due under the
to a vali
alive the
KONDAM

6

——S. be *within time—Suit if can be based on the acknowledgment.*

LIMITATION ACT (1908), S. 19.

S. 19
as been
ut must
e docu-
(*Bose, J.*) RAMPRASAD JAGBANDHOO *v.* ANANDI BRINDAWAN RAWAT. **174 I.C. 374=10 R.N. 377= A.I.R. 1938 Nag 180.**

——S. 19—*Acknowledgment—Statement in liability admitting liability and providing for arrangement for satisfaction of liability.*

An admission of liability coupled with a declaration

11-11-1921, the substance of which was that on that date, *i.e.*, 11-11-1921, a sum exceeding Rs. 850 was due from the debtor to the creditor on settlement of accounts, that the debtor was attempting to discharge the debt to the extent of Rs 850 by the sale of certain properties,
hat for the balance due in
provision for discharge by

amounted to an admission
11-1921, as required by law to constitute an acknowledgment, and that the position was not altered by the fact that the contemplated discharge proved ineffective. (*Varadachariar, J.*) RAMA-

sory note—If can amount to—If should be an instrument under S 2 (14) of the Stamp Act. *See* STAMP ACT, S. 35 **1938 N.L.J. 145**

——S 19—*Acknowledgment addressed to dead person—Sufficiency.*

An acknowledgment, duly signed, although it is addressed to a dead person will operate as a valid acknowledgment of a debt to save limitation under S. 19, Limitation Act (*Wort and Manohar Lall, JJ.*) AMRIT NARAYAN SINGH *v.* BAIJNATH PANDEY.
174 I.C. 779=4 B.R. 480=10 R.P. 551= A.I.R. 1938 Pat. 180.

——S 19—*Acknowledgment of interest—Sufficiency as regards principal*

An acknowledgment of interest due implies that there is some principal due upon which the interest is assessed,

1937 M.W.N 1312.

uld be

itation
gment
falling under Sch. I, Art. 1 of the Stamp Act The latter must be written with the intention of supplying

——S. 19—*Admission of liability—Payment towa account—If amounts to.*

Where a person puts his signature below a paid to account Rs 10 endorsed on the back of

missory note which contained on the front a promise to pay Rs. 2,141 with interest, the words were held to mean that the debtor had not paid the debt in full and that he only intended to make an acknowledgment of his liability to pay. (*Roberts, C. J. and Braund, J.*) U TUN MAUNG *v.* L. AH CHOY.

——S. 19—Agent duly a
charge of Court of Wards.
WARDS ACT. (1.

——S. 19—*Applicability— Acknowledgment after period of limitation but during period exc by Court of Wards Act—If can extend time.*

S. 19 of the Limitation Act cannot apply to a knowledgment made after expiry of period of limitation prescribed, but during the period excluded by S. 52 of the U. P Court of Wards Act, and so such an acknowledgment cannot extend time. (*Bennet, A.C J. Rachhpal Singh and Ganga Nath, JJ.*)
LAL SINGH.
175 I.C 556=10 R A.
1938 A W.R. (H C) 1
1938 A.L J. 252=A.I.

——S. 19—*Basis of suit—A*
promise to pay—Consideration,
ly taken before Full Bench—If

been proved. As it is an agreement for consid
whether it is before expiry of limitation or even
a suit on its basis cannot be held to be time-
Even if such point is newly taken before the Full Bench the question before the trial Judge and Single Bench

both the points is the same, viz, whether the suit is barred by limit
Din Mohammad
DAS.

to third person admitting equitable mortgage—If saves limitation—Letter giving addressee lien over properties pleaded with equitable mortgage—If effective without registration—Registration Act, S. 49.

A letter written by the debtor (mortgagor) to a third person, in which he agrees to give him a lien over certain properties "now with the creditor-mortgagor as collateral security" (the title deeds having been deposited with the creditor as equitable mortgage previously), is an acknowledgment of the existence of the equitable

mortgage which would save limitation under S. 19 of the Limitation Act. The fact that the letter is not registered does not make it inadmissible in evidence, because it is relied on only as evidence of a collateral fact, namely an acknowledgment by the debtor-mort-

——S. 19—*Implied acknowledgment— Promissory note—Payment by debtor—Endorsement on subsequent date—If amounts to acknowledgment.*

An acknowledgment within the meaning of S. 19 of

ng. 84.
under
trar—
operty

acknowledgment of the mortgage debt.

Held, that the appearance before the Registrar and
ition of the sale deed
only of execution of the
matters set out in the
nt in writing before the
which could be availed
J.) BALASUBRAMANIA CHETTY *v.* MANICKA CHETTIAR.
M.W.N. 113=A.I.R. 1938 Mad. 429.

xpl II—*Agent only authorised—Hindu*
—Separation of members—Acknowledg-
some members only—If binds other

IYER. 1931 M W.N.

——Ss. 20 and 21—*Applicability—Co-mortgagors—Payment by one—If saves limitation for suit on personal covenant as against the other—Joint contractors—If agents for one another.*

For the purposes of Ss. 20 and 21 of the Limitation Act two joint contractors, such as co mortgagors, are not agents one for the other, so far as a suit on the personal covenant is concerned. Although the mortgage itself may be kept alive by a payment made by one of the

joint contractor is not the agent of the other or others so as to save limitation as
and Manohar Lall, JJ.)
LAL SAHU.
19 P.
A.I.R. 1938 Pat. 383.

——S. 20—*Applicability—Hindu father—Promissory note by—Conversion of father and eldest son to Islam—Subsequent death of father—Payment and endorsement by junior sons—If saves limitation against eldest converted son.*

Where a Hindu executes a promissory note and keeps it alive, and becomes a convert to Islam along with his eldest son and dies, and subsequently his younger sons make payments and endorse the same, the payments are by persons liable to pay the debt and under S 20 of the Limitation Act limitation is saved not only against them but also against the eldest son though the latter has become a Mahomedan. His conversion to Islam cannot operate to rid him of his liability for the debt due under the promissory note of his father. (*Burn and Lakshmana Rao, JJ.*) SOMASUNDARA EDANGAPURANDAR *v.* NARASIMHA CHARIAR.

——Ss. 20 and
Hindu manager—
Part payment and
other separated me
being"

A person who as manager of a joint Hindu family executes a promissory note for a debt binding on the family cannot, after partition from the other coparceners, keep it alive as against the other members by making endorsements of part-payments on the note under S. 20 of the Limitation Act. Payments made after the partition are not payments made by the "manager for the time being" within the meaning of S 21 (3) (*b*) of the Limitation Act. (*Madhavan Nair*

——S 20—*Applicability—Payment by debtor to creditor without any intimation as to whether it is for interest or principal—Creditor appropriating same for interest at his option—Debtor not aware of same and not*

priates it wholly towards interest due, there is neither a payment of interest as such nor a part payment of the principal which would save limitation under S 20 of the Limitation Act If the debtor is shown to have consented to such appropriation or to have been aware of it, it may be treated as a payment of interest as such. (*Broomfield and Macklin, JJ*) HAVABU *v* ISUP MUSA.
40 Bom L.R. 968=A.I.R. 1938 Bom 467

——S 20—*Applicability—Requirements—Payment if to be as part payment.*

A payment to renew limitation under S 20, must be a payment as part payment. If it is not so, there exists no element of acknowledgment of a balance to justify the extension of limitation. That a payment was in

As to payments made before 1st January, 1928, the
ne significance because they
at in the case of a payment
not required to be evidenced
ear that the payment was in
fact towards interest and not left as a matter of doubt. As to payments made after 1st January, 1928, they are now placed on an equality. Therefore the words "as such" are material when the Court has to consider a payment made before 1st January, 1928, but they have no significance after the date mentioned Where a judgment-debtor makes a part payment to the decree holder, such payment saves the entire debt from limitation. Any appropriation made by the decree-holder is immaterial. (*Courtney Terrell, C.J. and James, J.*) BANKANIDHI SANTRA *v.* GODIPATNA CO OPERATIVE SOCIETY.
4 B R. 496=10 B P. 565=
A.I.R. 1938 Pat. 183.

——S. 20—Endorsement of payment after date of limitation but during holidays—If gives fresh start of limitation. *See* LIMITATION ACT, SS. 4 AND 20.
1938 A.W.R. (H C.) 572.

——S. 20—*Payment by debtor not specified—Part*

made towards
by the credi-
viously made
dgment of the
payment is in the handwriting of the debtor, limitation is saved under S. 20 of the Limitation Act and it is not necessary under that section that the writing should specify that the amount was paid in part payment of the principal as such. (*Tek Chand, J.*) JAWAHIR SINGH *v.* GHULAM HASSAN.
40 P L R. 124=
A.I.R. 1938 Lah. 347

——S 20—*Payment by Official Receiver—If can revive limitation.*

The Official Receiver is not an agent of the insolvent
debt on behalf of insolvent.
sed' in S. 20 of the Limitation
by the debtor. (*Norman.*)
AL
1937 A M L J. 101

——S. 20—*Payment towards decree—Application for execution within three years from date of payment—If within time.*

f the principal
f the Limitation
for execution of
the date of the
) HET RAM-
BODH RAJ *v.* AYA RAM TOLA RAM.
32 S L R 415=1938 O A 323=47 L W. 606=
40 P L R 606=1938 M.W N 662=
42 C W N 509=1938 A L J. 150=
1938 A W R. (P C) 45=1938 O L.R. 98=
1938 A L R. 129=1938 O W N 310=
10 R P C. 196=4 B R 308=
172 I.C 999 (P C.).

——S 20—*Payment under—If to be actual payment.*

It is unnecessary under S 20 that money should actually pass as a settlement of account may be as effectual as a real payment A transaction whereby the part agree that an amount previously due by the cre the debtor shall be treated as amount paid by

to the former, is in substance identical with a transaction where the debtor receives actual payment and pays the amount back to the creditor and gives a fresh period of limitation from such date. (*Dhavle, J.*) RAMPRABHA OJHA *v.* BISHUNATH OJHA.
174 I C. 585=4 B R. 461=10 R P. 525=A.I.R. 1938 Pat. 139.

——S. 20—*"Payment"—What constitu*
liable to pay the debt"—"Agent duly a
Meaning—Vendee of mortgaged property
pay part of consideration to mortgagee—
vendee—Sufficiency—Mortgagee acknowledging receipt
of payment without actual payment—Sufficiency.

One of the properties comprised in a mortgage deed was agreed to be sold to one *P* for a certain amount and it was stipulated that out of that amount *P* should pay

the execution of the sale by the
release deed was executed by the
recited that the mortgagee receiv
interest and that in consideration thereof he released his mortgage right over the item sold. No money was actually paid to the mortgagee on that day, the actual payment being deferred to a later date by agreement between the mortgagee and *P*. It was so paid subsequently.

Held, that the transaction amount
payment of interest by a person liable
within the meaning of S 20 of the Lim
was "a person liable to pay the debt"
mortgagor's "agent duly authorised" t
and the payment therefore saved limita
subba Rao and Abdur Rahman, JJ.) P
AYYANGAR *v.* EKAMBARA MUDALIAR
1938 M.W N. 397=
A I R. 1938 Mad 579=(193

——S. 20—*Payments when save limi*

The provisions of S. 20 of the L
when they speak of a payment of interest or principal, refer to the intention of the debtor in making the payment; payment of interest means that the debtor intended to pay towards interest;

tation Act mean a definite space of time and is the period prescribed by the Act, as provided in S. 3 of the Act which refers to the First Schedule to the Act. It does not include the extended period within which the suit may be filed by reason of the Court being closed on the last day of limitation as contemplated by S. 4 of the Limitation Act. Where limitation for a suit on a promissory note expires on Sunday, a payment of interest made the next day cannot give a fresh starting point though a suit filed on that date would be in time.

(*Stodart, J.*) PATTABHIRAMAYYA *v.* KRISHNA RAO.
47 L.W. 726=1938 M.W N. 513=177 I C 759=A.I.R. 1938 Mad. 683.

——S. 20 (1)—*"Debt"—"Persons liable to pay the debt"—Hindu joint family—Debt due by—Part payment by one member after partition in family—If keeps alive debt against others.*

for the purposes of S. 20, "persons liable to pay the debt" when the debt in question cannot be levied from them personally, but is merely recoverable by sale of the family property. Much less or they "persons liable to
reason of a partition the joint
and the debt is recoverable

PILLAI *v.* UTHANDIYA PILLAI.
I.L R. 1938 Mad. 968=1938 M.W.N. 714=48 L.W. 251=178 I.C. 243=A.I.R. 1938 Mad. 774=(1938) 2 M.L J. 33.

——S. 20 (1) proviso—*Payment appearing in handwriting of debtor—Same document, if can be taken as*

——S. 20 (1) proviso—*Payment of interest as such—Extrinsic evidence of payment being towards interest—Admissibility—Debtor executing pro-note for amount of*

v. THEVAMMAL. I L R 1938 Mad. 1090=1938 M W.N. 395=47 L W. 520=177 I.C. 743=A I R. 1938 Mad. 601=(1938) 1 M.L J. 620.

——S 20 (1) proviso—*Payment by cheque—Effect of—Cheque written out by debtor—If evidence both of payment and acknowledgment of payment.*

Under S. 20 of the Limitation Act, payment need not be in cash. If a cheque is delivered to a payee by way of payment and is received by him as such, the cheque operates as a payment subject to a condition subsequent

LIMITATION ACT (1908), S. 20.

that if upon due presentation the cheque is not paid, the original debt revives. If the debtor himself writes out the cheque by which he pays, the cheque itself is evidence of the fact of payment as well as of an acknowledgment of the payment within the proviso to S. 20 of the Act. The proviso only requires that the acknowledgment must be of the payment ; it is not necessary that it must also be stated that the payment is towards a parti-

A.I.R. 1938 Cal. 538.

——S. 20 (2)—*Applicability—Mortgagor in posses-*

mortgaged property as tenant of the mortgagee, the receipt of rent and profit by the mortgagee should be considered as payments of interest as such within the meaning of Sub S. (1) to S 20 of the Limitation Act. (*Niamatullah, Ag C J. and Verma, J*) RAM KUMAR v. MAHPAL SINGH I L R. 1938 All. 218= 1938 A.W.R. 27 (H C.)=1938 R D 230= 1938 A.L J. 18=1938 A L R. 257=174 I C. 292= 10 R.A 566=A.I.R 1938 All. 188.

——S. 21 "*Agent duly authorised*"—*De facto guar-*

NAGAYYA v. NARASAYYA. 1938 M.W.N. [illegible]= 48 L.W. 268=A I R. 1938 Mad. 853=

——S. 21—Mahomedan mi

Power to acknowledge debt

MINOR. 1938 M.W N. 671

——S. 21—*Partnership—Acknowledgment or payment by one partner—Authority—If can be inferred*

Direct evidence that one of several partners had authority to acknowledge liability or make payment so as to

necess.

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a case

S. 21.

stay th

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joint family and saves time against father and sons (*Mitra, J.*) RAGGHI v NATHU LAL 1938 A.W R. (H C.) 666=1938 A L J. 973= A I.R. 1938 All. 638.

——S. 22 (1)—*Applicability—Suit on mortgage—Vendee from mortgagor impleaded as party—Application after limitation to implead additional party alleged to be beneficial purchaser of properties—Competency.*

LIMITATION ACT (1908), S. 26.

In a suit by a mortgagee for sale on his mortgage, the mortgagors and their vendee were originally impleaded as defendants. Subsequently, after the expiry of more than 12 years from the due date fixed for payment, the plaintiff applied to implead another person as a party defendant as it was brought to his notice that the said person was the real purchaser and that the vendee impleaded originally was only a benamidar for the party

Held, that the impleading of the alleged beneficial owner merely as a matter of caution would not by itself

the Limitation Act,

new, be a new party.

Row, JJ.) SUBBA-SRINIVASARAGHAVA AYYANGAR 1938 M.W.N. 500=47 L W. 665= 177 I C. 381=11 R M.314=A.I.R. 1938 Mad 687.

——S 23—Adverse possession of mosque—Refusal to allow Muslims to pray—Continuing wrong. *See* LIMITATION ACT, SS. 3 AND 23 AND ART. 144, 40 P.L.R. 319=A I R 1938 Lah 369 (F.B)

——S. 23—*Applicability—Title suits brought after attachment under S. 146, Cr. P. Code—Limitation.*

Suits for recovery of land brought more than six years after attachment under S. 146, Cr. P. Code, are not

——S. 24—*Applicability—Suit in respect of negli*

Ba U and Dunkley, JJ.) S.A.A. ANNAMALAI CHETTIAR v A FIRM OF ADVOCATES. 1938 Rang L R. 457=176 I C 608=11 R R 61= A I R 1938 Rang 258 (F B).

——S 26—"*As of right*"—*Meaning of*

owner to make a grant The period of two years within which under the section a suit must be brought, if the section is to be availed of, should not, however, be confused with the period of one year mentioned in the explanation to the section. The explanation only defines the interruption contemplated by the section An interruption within the meaning of the explanation for more than a year will operate to prevent the claimant

LIMITATION ACT (1908), S. 28.

from adding the period of his previous enjoyment of the right to any period of enjoyment after such interruption so as together to make up the requisite total of 20 years, but will not, by itself, suffice to nullify any right that may have been already acquired by tw
uninterrupted enjoyment, for the section

——S 28—*Adverse possession for twelve years—If confers title.*

Per *Young, C. J.*—The operation of S. 28 of the Limitation Act perfects a title to the property in favour of the person in adverse possession after the period prescribed for recovery of possession has run. Twelve

40 P.L.R.

——S. 28 and
guardian—Alienee
after majority to a
prior alienee—Suit by alienee from guardian for possession—Right to decree—No suit by minor for setting

an alienation made by his guardia
possession of the property alienated, the
tion of S. 28, his right to that property
guished. It is not a case of a mere
barred, but a case where the right to
itself extinguished. If the alienee is subsequently dismissed by a purchaser from the minor after he attains majority, the alienee from the guardian is entitled to sue and obtain a decree for possession. A distinction must, however, be made between cases where the alienee from the guardian gets actual possession and those where the minor whose property is sold is never disturbed in his possession. In the latter cases where the minor's possession is not disturbed at all in spite of the guardian's alienation, the fact that the period under Art. 44 has expired does not disentitle the party in possession from successfully resisting the alienee's claim for possession. But the minor who has not been in possession and who has omitted to sue within the period limited by Art. 44 cannot resist the claim of the

junction by landlord dismissed as time barred—Structures subsequently destroyed by fire—Transferee from tenant erecting fresh structure on same site—Landlord, if can bring fresh suit.

Where a tenant erected structures on land let out to him for horticultural purposes and the landlord's suit for a mandatory injunction against him was dismissed as barred by limitat

LIMITATION ACT (1908), Art. 11.

in the user of the land and the land was not again used for agricultural or horticultural purposes. (*Mukherjea, J.*) BHUPENDRA NATH *v.* TRINAYANI DEBI.

42 C W.N. 758.

ty—Suit for re

ousehold servant,
day, per week
s not apply to the remuneration of
goldsmith. Suit by a goldsmith for recovering the price of his labour in making ornaments falls under Art. 56 and not under Art. 7. (*Niyogi, J.*) LAXMINARAYAN NATHMAL *v.* SHRI RAM DANMAL MARWADI. **I.L.R. 1938 Nag. 592= 177 I C. 345=11 R.N. 137=A.I.R. 1938 Nag. 286.**

——Art. 10—*Time barred claim for pre emption—*
ice.
n by a purchaser of a share in
t plead by way of defence his
n has become barred by limita-
Limitation Act. The right of
pre-emption is an inchoate right and in order to be

under certificate under Public Demands Recovery Act—Objections to—Rejection—Suit by objector for declara-
possession—Limitation.
the issue of a sale proclamation by the
under the Public Demands Recovery
are preferred and an order is passed

rejecting his objections. Defendant No. 1 filed a certificate against defendant No 4 and had it served on him on 30—6—1930, under S. 7 of the Bihar and Orissa Public Demands Recovery Act. Defendant No. 2 obtained a money decree against defendant No 4, and others who formed a joint Mitakshara Hindu family and in execution of that decree attached and brought to sale certain properties. Defendant No 1 laid claim to those properties on the basis of his certificate, and on 30—6—1930, it was ordered that the sale would be subject to the c
execution of
plaintiff was
filed a claim
defendant No.

9-10 1933. Plaintiff then instituted a suit for a declaration of his title to and for confirmation of possession,

Held, that the suit fell under S. 25 of the Public Demands Recovery Act read with Art. 11 of the Limitation Act and having been brought more than one year after the date of the order (4 6 1931) was barred by limitation. (*Agarwala and Varma, JJ.*) JAMUNA
17 Pat. 446=

LIMITATION ACT (1908), Art. 11.

R. 99, C. P. Code—Subsequent suit by him for partition of homestead brought more than one year after dis-

of his share is not barred by limitation, as the plaintiff

66 C L J. 537 = A I.R. 1938 Cal. 384.

——**Art. 11 (A) and S. 14 (1)**—*Suit under O. 21, R. 103, C. P. Code—Revision petition filed by plaintiff against order in claim case—Limitation—Starting point—Plaintiff's right to extension of time under S. 14 (1)*

The period of one year under Art 11 (A) of the Limitation Act for a suit under O. 21, R. 103, C. P. Code, would run from the date of the order passed in the claim proceeding and not from the date of the order of the High Court rejecting a revision petition filed against that order It would certainly be otherwise if the High Court interferes in revision with the order of the trial Court. Where the High Court rejects the revision petition, the plaintiff is not entitled under S. 14 (1) of the Limitation Act to the exclusion of the period during which he was prosecuting the re-

...Application for redemption under Punjab Redemption of Mortgag... merits—Subsequent civil su... —If barred.

Where an application for ... the Punjab Redemption of

not against the applicant and he need not, therefore, sue to set it aside In such circumstances, Art. 14 of the Limitation Act is inapplicable. Accordingly a suit brought by the applicant for possession of the land by redemption more than one year after the date of the order of the Assistant Collector, is not barred by that article. (*Abdul Rashid, J.*) PRABHU MAL *v.* CHANDAN.

40 P L.R. 245 = A I R. 1938 Lah. 512.

LIMITATION ACT (1908), Art. 36.

——**Art. 23**—*Starting point—Acquittal by trial Court—Application in revision against acquittal—Dis-... —Starting point ...ourt or revisional*

...es that time shall ...hen the prosecu-... ...to an end in some other manner. The words "when the plaintiff is acquitted" cannot be divorced ...otherwise termina-... ...other proceedings ...on is terminated not ...assed in the subse-... *...Varadachariar and* ...TY *v.* THOLASINGAM CHETTY.

I.L.R. 1938 Mad. 675 = (1938) M.W.N. 209 = 47 L W. 314 = 174 I C. 428 = 10 R M. 699 = A.I R. 1938 Mad. 349 = (1938) 1 M L J. 344 (F B.).

——**Art 29**—*Attachment and receipt of amount deposited in Court by receiver—Suit to recover it back—Limitation.*

Where certain amount deposited in Court by the receiver appointed under O. 40, R. 1, C. P. Code, is attached and paid to a person a suit to recover back such amount is not governed by Art 29, as the attachment is neither seizure within the meaning of Art. 29, nor wrongful. (*Addison and Din Mohammad, JJ.*) BALDEV RAJ *v.* MOOLCHAND AMOLAK RAM.

40 P L R. 685 = 176 I.C. 731 = 11 R L. 229 = A I R. 1938 Lah. 493.

...for declaration ...on of his decree ...himself—Under-...

...or declaration that ...ecution of his decree ...ot to *H* He also ...forbidding *M* from ...at *M* undertook to ...it was proved that ...*A* The suit was ...and it was declared ...anwhile the property ...brought a suit for

Held, that the suit was not for damages for wrongful

—Applicability—Person making false ...abitability of certain house and dissuading people from taking it on rent—Liability to owner—Suit for damages—Limitation.

Where a person dissuades other persons from taking a certain building on rent by making false statements as to habitability and safety of the building, the person so representing is liable in tort, the tort being analogous to slander of title and falling within the broader description of injurious falsehood The action is one for misfeasance independent of contract and Art. 36 appli

LIMITATION ACT (1908), Art. 36.

such action. (*Stone, C.J. and Vivian Bose, J.*) HARGOVIND DULLABH JIWAN *v.* KIKABHAI RAHIMTULLAH. I.L.R. (1938) Nag. 348=176 I.C. 257=11 R.N. 45=A.I.R. 1938 Nag. 84.

——Art. 36—*Applicability—Suit for damages in respect of a tort.*

If a suit arises out of tort, or if it arises both from tort and contract and there is no waiver of the tort, it has to be brought within the two years allowed by Art. 36 of the Limitation Act. (*Collister, J.*) COURT OF WARDS, MUZAFFARNAGAR *v.* AJODHIA PRASAD. I.L.R. (1938) All. 454=176 I.C. 141=11 R.A. 50=1938 A.W.R. (H.C.) 184=1938 A.L.J. 328=1938 A.L.R. 569=A.I.R. 1938 All. 305.

——Arts. 36 and 120—*Applicability—Trustee failing to collect monies due to trust—Loss sustained by trust—Suit by succeeding trustee or co-trustee—Limitation—Starting point.*

Art. 36 of the Limitation Act does not include wrongs committed by trustees in respect of trusts. Art. 120 and

good the loss sustained by the trust by reason of the defendant's omission to collect moneys due to the trust. The starting point of limitation under Art. 120 would depend upon the circumstances of the case. If a trustee of a public trust commits breach of trust, the right to sue arises when a trustee is appointed. If there are other trustees are themselves not liable, the limitation would running immediately the loss is occasioned. But if the co-trustees have also made themselves liable for the breach of trust, the position would be the same as in the case of defaulting sole trustee. In the case of a private trust the *cestui que trust* would ordinarily have the right to sue from the date of the breach of trust. (*Leach, C.J., Varadachariar and King, JJ.*) SUBBIAH THEVAR *v.* SAMIAPPA MUDALIAR. I.L.R. (1938) Mad. 586=1938 M.W.N. 229=47 L.W. 344=174 I.C. 459=10 R.M. 706=A.I.R. 1938 Mad. 353=(1938) 1 M.L.J. [illegible]

——Art. 44—Applicability—Release b[illegible] sub soil rights of minor mortgagee—Suit [illegible] Limitation. *See* GUARDIAN AND WARD[illegible] AND 30. A.I.R. 1938 Pat. 337.

——Art. 44—*Applicability—Suit for possession by*

alienated the whole or a portion of the property purchased by him before the suit, the alienee from the purchaser cannot be bound by the adjudication in the suit by the ward against the original purchaser. If the ward seeks to dispossess the second alienee, the question of the validity of the alienation must be re-tried, and Art. 44 requires that such a question should be investigated and

of minor—Transfer by guardian—Repudiation by minor

LIMITATION ACT (1908), Art. 58.

—Suit to set aside—If necessary—Suit by minor on the mortgage—Effect of—Right of assignee to sue on mortgage. *See* GUARDIAN AND WARDS ACT, S. 30. 1938 M.W.N. 802.

——Art. 44—Scope—If to be read with S. 44—Failure of minor to sue within time prescribed—Effect of. *See* LIMITATION ACT, S. 28 AND ART. 44. 43 Mys H.C.R. 197.

——Art. 48—Applicability—Suit against widow of late high priest of temple by present high priest—Claim to recover war bonds belonging to deity or their substitutes or their value—Limitation—High priest—If "trustee." *See* LIMITATION ACT, S. 10 AND ART. 44. 19 Pat.L.T. 367.

——Art. 49—Applicability — Pronotes left with another either as security or for safe custody—Suit in respect of. *See* LIMITATION ACT, ARTS. 145 AND 49. 1938 A.W.R. 59 (P.C.).

——Art. 52—*Purchases on credit—Payments—Appropriation—Rule as to—When whole claim not* [illegible]*d.*

each case, where there are more debts than one [illegible] payment is made without a specific appropriation, it is a question of fact to be found, as to which debt it was made. If it is proved that it was made on account of all the debts, then it would operate to save all

by plaintiff's employee for electric current supplied to defendant—Suit by plaintiff for balance not charged—Article applicable. *See* LIMITATION ACT, ARTS. 96 AND 52. 40 P.L.R. 143.

——Art. 56—Applicability—Suit for remuneration by goldsmith for work done. *See* LIMITATION ACT, ARTS. 7 AND 56. A.I.R. 1938 Nag. 286.

——Arts. 57 and 58—*Applicability—Lender transferring to borrower cheque drawn by another person and endorsed in his favour.*

[illegible]ender draws [illegible]ner. It does [illegible] the borrower [illegible] *person and* endorsed in his favour by the payee. Such a suit comes within the ambit of Art. 57 only. (*Sir Shadi Lal.*)

1938 P.W.N. 466=40 Bom.L.R. 752=A.I.R. 1938 P.C. 66=(1938) 1 M.L.J. 785 (P.C.).

——Art. 58—*Payment of cheque—What amounts to.*

A cheque is paid under Art. 58 when it is cashed by the lender's bankers, for it is only then that the lender's money passes into the hands of the borrower and the loan is made by the former to the latter. The mere

172 I.C. 978=1938 A.W.R. 30 (P.C.)=

rt. 64.

definite sum of money
nt and which the law
he plaintiff, and is not
efendant is asked to
neys when the person
entitled to just allow-
JJ.) VIDYA WANTI
. I.R. 1938 Lah. 139.

Assignment of decrees by insolvent prior to adjudication—Annulment of as-

ng point

annulled and an order was passed under
vincial Insolvency Act.
nt of dividend to the cre
ditor filed a suit for re

annulled by
March, 1930,
recovery of
r the decrees
t of annulment was to remit the party
is set aside to his
n against the credi
of the appointee,
osition of a trustee
where the proper
ack to the debtor,
r as regards the creditor's claim was
deposit cannot lose its character as
Dunkley, JJ.) DAW HNIT *v*
YAR. 1938 Rang L R 468=
A.I.R 1938 Rang 335

pplicability—Money deposited in
ween depositor and another divid
in the two—Character of deposit—
recovery—Limitation—Starting

assigned to him both before the annulment of the
and consequently any moneys collected by the appellant at any time more than three years prior to the suit could *not be recovered, the claim thereto being barred under* Art. 62 (*King, J.*) SHANMUGAM CHETTIAR *v.* OFFICIAL RECEIVER, WEST TANJORE
1938 M W N 290=47 L W 557=178 I.C 448=
A I R 1938 Mad 532=(1938) 1 M.L J. 682.

——Art 64—*"Account stated"—Essence of*

The essence of an account stated is the fact that there are cross items of account and that the parties mutually
and by treating the
discharging the items
on to agree that the
ment contained items
by the defendant
nst remittances yearly
nce struck showing a
Below this there was
s correct" which was

right to sue ...
and refusal Art 115 cannot apply
the claim can in no sense be one for
breach of a contract. (*Pandrang Row and Venkata-ramana Rao, JJ.*) RAMASWAMI CHETTIAR
KAM CHETTIAR. 1937 M W
47 L W. 118=176 I C. 617=11 R
A I R. 1938 Mad 236=(1938) 1 M L J 66.

——Art 60—*Demand—If to be for entire payment.*

The demand contemplated by Art. 60 is a demand for the repayment of the whole amount of the deposit due, and not a demand for partial payment (*Mosely and Dunkley, JJ.*) DAW HNIT *v* ANAMALAI CHETTYAR 1938 Rang L R 468=
A.I.R 1938 Rang. 335.

——Art. 60—*Demand—Proof of debt in insolvency—If amounts to.*

Where a banker with whom deposi
current account is adjudicated insolvent,
of debt and claim made in insolvency by the creditor is not a demand within the meaning of Art. 60 (*Mosely and Dunkley, JJ.*) DAW HNIT *v* ANAMALAI CHETTYAR. 1938 Rang L.R 468=
A.I.R. 1938 Rang. 335.

to pay under S 25 (3), Contract Act, as there was no express promise by the defendant to pay the balance. (*S K. Ghose and Patterson, JJ.*) SATIS CHANDRA *v.* RAMPADA CHATTAPADHYA A I.R. 1938 Cal 861.

——Art. 64—*Account stated—Mere statement of balance.*

A mere statement of the balance which is due on a

NATH *v* CHAMELI I.L.R (1938) All 741=
1938 A.W R. (H C) 517=1938 A.L J 773=
177 I C 815=1938 A L.R. 781=11 R A 223=
A.I.R 1938 All. 504.

——Art. 64—*Account stated—Requisites.*

A widow had an eight annas share in the property of her deceased husband, the other eight annas belonging to the brother of her husband. She executed a deed described as a deed of relinquishment whereby she conveyed her eight annas interest to her husband's brother The husband's brother executed a mortgage of the 16 annas interest thus obtained by the deed. The property was sold in execution of the mortgage decree. The widow brought a suit for declaration that her title

not was immaterial The suit, brought more than three years after she knew the fact entitling her to set aside deed, was barred (*Wort and Manohar Lal,* GYAN PRAKASH DAS *v.* MT. DUKHAN KUAR.

173 I C 479 = 4 B R. 293 = 1937 P.W.N. 82 10 R P. 415 = 19 Pat L.T. 362 = A I.R. 1938 Pat.

——**Art. 91**—Applicability—Suit to avoid gift deed as having been executed under undue influence—Limitation—Starting point *See* CONTRACT ACT, S. 16. **39 Bom.L.R 1233.**

——**Arts 91 and 142**—*Applicability of—Void and voidable instruments—Claim with reference to separable legal part.*

There is a wide difference between an instrument which is voidable and one which is void from the beginning In the former the right under the contract continues until it is avoided and therefore restoration of property handed over in pursuance of it cannot be claimed until the instrument is avoided either by the act of parties or through the Court. In the latter no legal

parts can be separated from the illegal, then the ...

177 I C. 6 = 11 R N. 109 = A I R. 1938 Nag 335 (F. B.).

——**Art. 91**—*Person dedicating property for mosque reserving for himself perpetual connexion with it—Suit for cancellation of document—Limitation—Starting point.*

Where a person dedicating ... construction of a mosque, and ... manent mutawalli, reserving connexion with the mosque in den*, brings a suit for avoidin... declaration of his right to manage the affairs of the

institute any suit to avoid the document. (*Addison and Din Mohammad, JJ.*) JAMIAT DAWAT *v.* MOHAMMAD SHARIFF. **A I.R. 1938 Lah. 869.**

——**Art. 91**—*Plea of bar under—Onus—Suit to set aside deed brought about by undue influence.*

Where a suit is brought by a lady to set aside a deed executed by her by misrepresentation and undue influence of a person who stood in a fiduciary relation to her and was thus bound to safeguard her interest, the burden

A.I R. 1938 Rang 264.

——**Art. 91**—*Suit to declare deed of gift invalid—*

governed by Art. 91 of the Limitation Act and the period is three years and starts from the time the plaintiff became aware of the true character of the deed and of the transaction which he had entered into. (*Ganga Nath, J.*) IBRAR AHMAD *v.* KAMNI BEGAM.

176 I C 874 = 1938 A.L R. 677 = 1938 A.W.R. H.C. 375 = 11 R A. 151 = 1938 A.L J. 502 = A.I.R. 1938 All 451.

——**Art. 96**—*Applicability—Suit for sale on mortgage—Property mistakenly described—Suit for rectification barred—Right to relief—Oral evidence as to correct property and intention of parties— Admissibility— Specific Relief Act, Ss. 33 and 34*

It is open to the plaintiff or the defendant in a suit to

(*King a*...
VENKA...

——**Arts. 96 and 52**—*Wrong bills sent by mistake by plaintiff's employee for electric current supplied to*

for less than the amount due, a suit by the plaintiff for

act : also the defalcated money w sion ; nor was there anything else could be said to represent it.

Held, that the suit against he make good the loss occasioned by of trust out of his general estate would apply (*Bose and Puranik* BAI *v.* SHRI DEO RADHA BALLAB...

176 I.C 57=11 R N 24=

——Art 98—*Cause of action.*

Article 98 does no more than ca tee's liability for breach on to his It does not contemplate any diff (*Bose and Puranik, JJ.*) SAHA... DEO RADHA BALLABHJI. 176 I.C 57=11 R N. 24= A I.R 1938 Nag. 30

——Arts 109 and 120 — *Applicability—Suit for*

AUNG MYINT *v.* DAW MYA.

——Art. 109—*Starting p... profits or date of accrual of ca... profits*

The terms of Art 109 of the Limitation Act are per

to recover those profits arose (*Beaumont, C J and Sen, J*) DULLABHBHAI *v.* GULABBHAI.

I L R. 1938 Bom 107=173 I C 806=10 R B 382= 40 Bom L.R 100=A I.R 1938 Bom. 158

——Art 113—*Applicability—Agreement to finance litigation—Date 'fixed'—What is—Date of decree—Meaning*

Statutes of limitation must be strictly construed

The question as to whether the first part of Art 113 is or is not applicable depends to a great extent on the language of the agreement. An agreement between *A*

re than three
three years

not be the
Art. 113 as
decree which
As the decree,
and then to
unassailable, it
performance of
rt of Art. 113
in time (*Cold-*
PARSHAD *v.*
. 1938 Lah. 23.
ossession under
—Article appli-

I L R 1938 All 664=1938 A W.R H.C. 365= 176 I C. 523=11 R.A. 126=1938 A L R 643= 1938 A.L J. 561=A.I R 1938 All 429.

governed by Art. 120 and not by Art 115, Limitation Act. The liability of the defendant does not arise out him and the Municipality, but imposed by the statute on the to pay the fees assessed by the rs The Municipality is autho rized by S. 368 of the Act to recover such fees by distraint or suit (*Agarwala, J.*) MATHURA PRASAD *v* SPECIAL OFFICER IN CHARGE, GAYA MUNICIPALITY.

175 I C 86=4 B R. 523=10 R P. 579= A I.R. 1938 Pat 192

——Art 115—Applicability—Money deposited in

—Applicability—Suit for compensa- *Committee using another's land for cattle fair for years*

Where a Municipal Committee continues to hold a cattle fair on another's land from year to year, an infer-

LIMITATION ACT (1908), Art. 115.

and Din Mahomed, JJ.) MUNICIPAL COMMITTEE, AMRITSAR *v.* KANSHI RAM. 178 I.C. 49= A.I.R. 1938 Lah. 267.

——Art. 115—Applicability—Suit for terminal tax. *See* LIMITATION ACT, ARTS. 12C

——Art. 115—*Order for differ*

of machinery delivered found to be of different make—All machinery delivered more than three years before suit—Part of engine delivered within three years—Suit for breach of contract—Limitation.

Certain company *A* informed the firm *B* that they wished to erect a weaving shed and asked them to send a complete specification for the same. Specifications containing three estimates for different machines were covered by a single letter which gave a total price of all the machinery and stated that one third of such total price should be paid in advance with the order. The order was placed and delivery taken, but it was found that some machinery was not of the same make as ordered. A suit was brought by company *A* against firm *B* for damages for breach of contract. Almost all the machinery including the subject matter of the suit was delivered more than three years before the date of the suit but a part of an engine was delivered within three years. The trial Court dismissed the suit as time-barred holding that the order was an order for separate pieces of machinery and time ran from delivery of each machine.

Held, Art. 115, applied.
conclusively showed that
single whole and the time b
the last delivery. The su
(*Dalip Singh and Skem,*
SPINNING AND WEAVINC
STRATTON & CO A.I.R. 1938 Lah. 277.

——Art. 116—Applicability—Mortgage by Hindu father for antecedent debts and for fresh cash advances—Suit against son after death of father—Limitation. *See* HINDU LAW—DEBTS. 40 Bom.L.R. 381.

——Art. 116—*Mortgage bond—Claim to personal decree—Limitation.*

rights—Limitation.

A Brahmin died leaving behind him a widow and three daught

sion of the la
ing a son as l
tered and m
son's name.
a suit to cont
years of this s
declaration tl

was barred as it was brought after
stream and Din Mohammad, JJ.) M
MT. SURTI. 40 P.L.R. 660=A.I.L.

LIMITATION ACT (1908), Art. 120.

——Arts. 120 and 132—*Applicability—Mortgage of entire mukarrari rent payable to landlord by tenant under kabuliyat in respect of lakhraj jagir, naqdi kasht land and manhunda rice—Suit to enforce—Limi-*

i rent of Rs. 100
of June 1913 in
, naqdi kasht land and manhunda rice," is a mortgage of the landlord's right together with the landlord's charge, and therefore a mortgage of an interest in immovable property, and a suit to enforce such a mortgage falls under Art. 132 of the Limitation Act. The mortgaged property cannot be said to be merely an actionable claim, and the suit cannot therefore be subject to the six years' rule of limitation under Art. 120. (*Courtney Terrell, C.J. and Manohar Lall, J.*) RAMZAN ALI *v.* LAL SINGH. 173 I.C. 64=4 B.R. 281 (1)=10 R.P. 466= 18 Pat.L.T. 801=1937 P.W.N. 826= A.I.R. 1938 Pat. 16.

——Art. 120—Applicability—Municipal license fee assessed under S. 180, Bihar and Orissa Municipal Act—Suit for—Limitation. *See* LIMITATION ACT, ARTS. 115 AND 120. A.I.R. 1938 Pat. 192.

——Art. 120—*Applicability—Representative suit for declaring certain land as graveyard and for injunction directing defendants to remove buildings erected thereon.*

Where certain Mahomedan residents bring a suit on behalf of all the Mahomedan residents for a declaration

yard. (*Bhide, J.*) MAHOMED DIN *v.* MAHOMED DIN. 178 I.C. 125=A.I.R. 1938 Lah. 254.

——Art. 120—*Applicability — Resulting trust—Moneys subscribed by large number of people for particular purpose and held by one of them with liability to pay interest—Trust or deposit—Purpose failing—Effect—Suit by subscriber for recovery of his share—*

that the funds are held by one of the subscribers who undertakes to pay interest on the funds would not be in-

AR. 1938 M.W.N. 310=47 L.W. 389= A.I.R. 1938 Mad 641=(1938) 1 M.L.J. 616.

BILITY OF BANKER. 48 L.W. 577= A.I.R. 1938 Mad. 999.

——Art. 120—Applicability—Suit for correction of record-of-rights. *See* B. T. ACT, S. 111-B AND LIMITATION ACT, ART. 120. 42 C.W.N. 96.

——Art. 120—Applicability—Suit for profits of immovable property against co heir in possession *See* LIMITATION ACT, ARTS. 109 AND 120—APPLICABILITY. A.I.R. 1938 Rang. 416.

Fresh attack on title—Suit brought within six years of last attack is in time.

A.I.R. 1938 Cal 804.

——Art. 120—*Declaratory suit—Cause of action—Plaintiff in possession*

Proceedings for partition of village started in 1922 In tha entered to the effect that the accordance with the land revenue

under S. 117, Punjab Land Revenue Act, to the Civil Courts for the decision of the question of title The plaintiff who had all along been in possession brought a suit within six years of the final order for declaration that the partition should have been made according to the revenue assessed on the holdings.

Held, that the final order for partition of 1932 threatened the possession of the plaintiff and thus gave him a fresh cause of action. The suit brought within six years of that date was within time. (*Addison and Din Mahommad, JJ*) DASONDHI KHAN *v.* JAN MOHAMMAD. A.I.R. 1938 Lah 318

——Art 120—*Declaratory suit—Fresh invasion of*

previous invasion is a distinction without a difference (*Bhide, J on difference between Dalip Singh and Skemp, JJ.*) RURA *v* BANTA 40 P L R 600= A I R. 1938 Lah 227.

person is not the shebait and that the deed appointing

him as such is invalid is governed by Art 120 and not by Art. 124 of the Limitation Act Such a suit is therefore time barred, if not brought within six years from the date of the deed. (*S K. Ghose and Patterson, JJ.*) NIRMAL CHANDRA *v.* JYOTI PRASAD 177 I C. 898=11 R C. 292=68 C L J. 230= 42 C.W.N. 1138=A.I R. 1938 Cal. 709.

——Art. 120—*Partition proceeding—Plaintiff's title to land denied—Plaintiff never in possession—Suit*

were owners of land instituted in 1935, was clearly barred by time under Art 120. (*Addison and Abdul*

action does not give rise to a fresh right, for instance, where property is attached, the procuring of the attachment is the wrongful denial and the cause of action d, in such a case it een a "continuing g point during the But from this it

and when he does so, it is with reference to the particular infringement he alleges that the limitation should be reckoned (*Venkatasubba Rao and Abdur Rahman, JJ*) APPA RAO *v* SECRETARY OF STATE 1938 M W N 244=47 L W 438= A I R. 1938 Mad 193=(1938) 2 M.L J 434.

——Art 120—*Suit by co-tenant for accounts—Defendant denying that plaintiff is co-tenant—Limitation.*

There is nothing in Art 120 warranting the view that where a defendant is a co tenant of property with the plaintiff, he can bar the latter's subsisting right to ask him for accounts by merely denying that the plaintiff is fendant is a co tenant 's a right to ask for continually as income But this right is con- the account sought is more than six years old (*Coldstream and Monroe, JJ.*) VIDYA WANTI KAUR *v* SARDAR SHAHDEV SINGH. A.I.R 1938 Lah. 139.

——Art 120—*Suit to have order of withdrawal of*

Art. 120 of the Limitation Act (*S K Ghose*

terson, JJ.) BANWARI MUKUND DAS NANDI DALAL *v.* AJIT KUMAR NANDI, 67 C.L.J. 320= A.I.R. 1938 Cal. 874.

——Arts 120 and 115-
Article applicable.
A suit for recovery of ter
Art 120 and not by Art 11
Ag J.C. and Lobo, A J C)
v KALOOMAL PAMOOMAL. 173 I.C. 678= 10 R.S 226=A.I.R. 1938 Sind 48.

ceners The suit was not one for possession of any specific sum, as the amount recoverable could not be exactly known, for the person in possession was entitled to deduct his expenses of management even if the widows were in a position to state the exact moneys which came into the hands of the surv parcener.
Held, that Art. 120 and not Arts. 48, 49 ar plied (*Coldstream and Monroe, JJ.*) VIDY KAUR *v.* SHAHDEV SINGH. A.I.R. 1938 Lah 139

——Art. 123— *Applicability — Annuity payable under express terms of will and descendible in male line*

an executor as such is not an express trustee. The plaintiff in such a suit can recover such arrears of annuity as are not paid within 12 years of the date of action. (*Manohar Lall and Chatterji, JJ*)

——Art. 123—*Applicability—Claim of profits in movable property of deceased.*
Art. 123 does not apply to the claims of profits in the estate of a deceased in respect of movable property. (*Roberts, C. J. and Sha.,*
DAW MYA. 178 I.C.

——Art. 125—*Applic proprietary body of vill widow void.*
The word 'reversioner' should not be imported into Art. 125. Art. 125 is not restricted sioners A suit by certain members of body of the village to declare that an

gagor withdrawing compensation money—Suit by mortgagee to enforce security—Starting point.

Where a portion of the mortgaged property is acquired under the Land Acquisition Act and the mortgagor withdraws the compensation money, a suit filed by the

the withdrawal of the compensation money, but the non-payment of the mortgage debt. (*Iqbal Ahmad, Harries and Bajpai, JJ.*) GIRDHARLAL *v.* ALAY HASAN MUSANN

1938 A.

——Art. 132—*Co vendee paying off mortgage to avert sale—Right to a charge—Limitation for its enforcement.*
Where a payment has been made by

ment is made. The right to enforce the charge as against the co vendees accrues on the date of payment and the article applicable to such a claim is Art. 132 of the Limitation Act. (*Yorke, J.*) BRIJ BHUKHAN *v.*

security is ample, to stand by his investment the full term of the mortgage. If the mortgagee accepts payments of overdue instalments which are tendered to him

A I R. 1938 Mad. 836=(1938) 2 M L J. 251.

——Art. 132—*Mortgage bond containing default clause—Money, when becomes due.*
The fact that the mortgage bond ides that the ng of a default the less due (*Biswas, J.*) MAJID. 68 C.L J. 109=43 C.W N. 38.

——Art 132 and S 20—*Suit on mortgage—Stipu would become payable years—Default commit*

mortgage amount by sale of the property mortgaged. The lower Courts held that although Art. 132 of the

LIMITATION ACT (1908), Art. 134.

Limitation Act applied, the clause relating to default revived on 28th December, 1921, when a bond for the payment of interest was executed and consequently the money became due not on the date when the bond was executed but on the expiry of three years from that date. The suit was accordingly decreed.

Held, that S. 20 of the Limitation
the point that a fresh period of
computed from the time when the
and that being so, no question of
time by a period of three years as provided in the case of original default, arose in the case. Default did take place during the first three years and the cause of action arose on the 14th April 1913. Subsequent payment of interest merely gave the mortgagee a fresh start but the *terminus a quo* could not be
provided in the section itself.
had only twelve years from the
28th December, 1921, within
was, therefore, time barred.
BHAGAT RAM *v.* RALLA RAM

A I R 1938 Lah. 570

——Art 134—*Nature and scope of—Onus of proving facts relevant to applicability of article—Usufructuary mortgage—Subsequent sale by mortgagor—Mortgage's representative, mortgaging same property along with that of his own—Suit by vendee from mortgagor—Art 134, if applies.*

A close perusal of Art 134 of the Limitation Act would show that it was brought into existence with the object of enabling the filing of suits for possession of properties primarily mortgaged and subsequently trans

benefit of an abridged period of li
usufructuarily mortgaged his proper
subsequently sold it to a third person
representative, mortgaged the same
that of his other properties to a different person

——Art. 134 A—*Applicability—Suit by Hindu idol for injunction alleging transfer to defendant by previous mahant*

Held, further, that if however *B* filed a suit against *A*, no period of limitation would run against *A* in his defence. (*Addison, C. J. and Din Mahomed, J.*) THAKARJI MAHARAJ *v.* KHUSHI RAM.

Plaintiff seeking to set aside transfer by previous Mahant in favour of defendant—Limitation—Starting point—Onus.

LIMITATION ACT (1908), Art. 137.

Where in a suit on behalf of an idol for a permanent injunction restraining the defendant from dispossessing the plaintiff from a certain land the substantial relief claimed by the plaintiff is to set aside a transfer of the land made by a previous mahant in favour of the defen-

stage of the case the plaintiff has ever fixed any date on which he alleges that he came to know of the transfer to the defendant, the suit must fail on that account (*Abdul Rashid, J.*) THAKARJI MAHARAJ *v.* KHUSHI RAM. 40 P.L.R. 184 = A.I.R. 1938 Lah. 470.

after the mortgage, the cause of action for a suit for possession accrues in that year. The fact that interest was paid and accepted by the mortgagee in certain subsequent years cannot by itself be held to be sufficient to show that the default was condoned and the parties were restored to their original position. (*Bhide, J.*) GAJJAN *v.* KISHORI LAL. 40 P.L.R. 48.

——Art 135—*Suit by mortgagee for possession as owner—Starting point—Bengal Regulation XVII of* 1806.

A suit by a mortgagee without possession for posses-
basis of owner-
in twelve years of
Bengal Regulation
) AHSAN ELAHI
40 P L R 798 =
A I R 1938 Lah 809

ation Act, the starting
when the vendor is first
Ghose and Nasim Ali,
CHARAN
Cal. 790.

Decree in
Code—
of writ
of posses-
livered—
delivered

and possession by respondent originated out of dispossession subsequent thereto—Defendant alleging possession from date prior to suit under O. 21, R. 103—Fresh
limitation. *See*
19 Pat.L T 250.

for possession, by
mortgagor on pay-
ment of entire pro-
—Article applic-

Where after a Court auction of the share of one of four co mortgagors, the remaining co mortgagors redeemed the property, and after once again mortgaging and redeeming it, finally sold the entire property and
ser sued for possession of
proportionate amount due
to the proper article of the
to such a suit, it was held
that it was not possible to apply, Art 137 to the case of a person who steps into the shoes of a co owner wh
co mortgagors have redeemed his share of the pr

from a mortgagee. The co mortgagors on redeeming the property and obtaining possession, hold it adversely to the non redeen Although they dealt with the property as was not until they sold the whole including the share of that other person, that they exercised those of that other person. That ot representative should bring his suit the date of sale according to Art. 144. who has redeemed the whole mortgage does not become a mortgagee of the share of his non-redeeming mortga-

——Art. 138—*Cause of for sale—Purchase by mortga of delivery of possession—Mortgagor and lessee under him continuing in possession—Mortgagee-purchaser selling rights to another—Suit by latter for possession—Limitation—Starting point—Proof of subsisting title and possession within* 12 *years—Necessity.*

On 22-9-1890, the ancestors of the defendants first-party executed a mortgage bond in favour of *G* for

Rs. 175-5 0 e brought a or Rs 17 000

ultimately brought the property to sale on 3 The sons of the mortgagee purchased the the sale for a sum of Rs. 40,966, which amount due under the mortgage decree. The sons of *G* however, did not get delivery of possession, and the mortgagors judgment-debtors continued in possession. On 22—5—1926, the heirs of the execution purchasers sold *kebala* sion o imple decree tiff as possession was delivered in execution on 8—10—1927. Plaintiff again failed to get possession of the lands in suit as well as the other lands, and on 12—11—1929, he commenced the present action for a partition of the lands.

Held, (1) that the suit was sion in the guise of a suit for a p tiff must therefore prove his sub sion within 12 years. (2) that

suit for ejectment of the trespasser or the lessee (even if the lease be regarded as unauthorised) within 12 years of the date of the cause of action, the suit was hopelessly barred by limitation. (*Manohar Lall and Chatterji, JJ.*) RAMASRAY PRASAD CHOUDHARY *v.* C. G. ATKINS. 175 I C. 279 = 1938 P.W.N. 177 = 4 B.R. 565 = 10 R.P. 597 = 19 Pat L T. 95 = A I.R. 1938 Pat. 189.

——Art. 138—*Inapplicability — Judgment debtor not in possession at date of sale.*

Art. 138 of the Limitation Act does not apply to a

67 C.L J. 294 = A.I.R. 1938 Cal. 790.

47 L.W. 236.

46 L.W 848 = A I.R. 1938 Mad. 73.

——Art. 141—*Applicability—Muafi right—Right to sue for possession—If passes on to heirs.*

Muafi rights constitute immovable property. By reason of possession of those rights by defendants, under Art. 141 of the Limitation Act, it is incumbent on a , to sue for pos- the last widow. h his death but O MAL *v.* GOPI 3 A.M.L.J. 63

——Art 141—*Starting point—Successive female holders—Time—When begins to run—Death of last female holder—Suit within* 12 *years of—If in time.*

——Art 142—*Applicability—Burden of proof.*

Where the plaintiff's case was that he was in possession till a particular date and that he was driven out of possession on that date, there can be no doubt that Art. 142 applies to the case. In such a case although

R. C. Mitter, JJ.) RAMENDRA PROSAD BASU *v.* BARADA PROSAD BASU. 66 C L J. 359 = 175 I C. 247 = 10 R C. 777 = A I R. 1938 Cal. 206.

not come under Art. 142 and the residuary Art. 144 is the one that would apply. The word 'dispossession' imports, ouster, a driving out from possession against the will of the person in actual possession. The word 'discontinuance' implies a voluntary act an abandonment of possession followed by the actual possession of another. An intention to abandon is necessary and it must be either proved or admitted and cannot be assumed. (*Bose, J.*) MAHERBAN *v.* YUSUFKHAN. 1938 N.L J. 418.

LIMITATION ACT (1908), Art. 142.

——Art. 142—*Applicability—Parties to suit co-sharers—Plaintiff alleging that he was in possession of certain property and was dispossessed by defendants.*

Where the parties to a suit are co-sharers and the plaintiff comes to the Court with an allegation that he was in possession of certain property and was dispossessed by the defendants, the case is governed by Art. 142 and it is necessary for the plaintiff to prove his possession within 12
have been
when he
possession
pleaded by
cannot be held to be holding possession of t
in dispute on behalf of the plaintiff and t
cannot be held to have been even in

scope—Adverse possession

Dispossession, referred to in Art. 142, is a forcible

however, a suit is based on title and an alleged permissive occupancy, Art 144 applies
decided fairly on the question of
Long and uninterrupted possession
rent or term or conditions, in th
jagirdars, evidenced by permane
temporary hutments, constitutes
the full sense of that word (*Davis,*
ARAB JHANGLU *v.* PANJAL SHAH
A.

——Arts. 142 and 144—*Applic*
on possession and dispossession—
Onus of proof—Defendant—Whet
possession

Arts. 142 and 144 apply to t

must allege prior possession and dispossession by the defendant within 12 years. The burden of proof is on

tion in the plaint that the plaintiff had been in possession and has been dispossessed. It applies when the suit is based on the ground that the plaintiff is the owner of the property and the defendant is a trespasser having no right to remain in possession.

Quaere.—Whether the last of several but independent trespassers can defeat the owner's title although he himself has been in possession for only a few days before the date? (*Rang*
KRISHNA.

40 Bom L R.

——Art. 142—Burden
ACT, ART. 142—APPLICA
66 C.L.J.

LIMITATION ACT (1908), Art. 142.

——Art. 142— *Possession—Proof—Waste land—Nature or possession—Absence of specific acts of possession—Effect—Land leased for cultivation—Lessee cultivating bulk of area—Small portion remaining waste but trespassed upon and reclaimed by others—Suit by lessee for possession—Limitation—Proof of possession—Chota Nagpur Tenancy Act, S. 64—Applicability.*

The plaintiff obtained from the landlord a lease of a

oved possession
that the defendants by their acts of
quired special rights by converting
within the meaning of Ss 64 and
agpur Tenancy Act. It was found
that neither the plaintiffs nor the defendants proved
any specific acts of possession over the plots up to the

area of
mired to
are yard
lk of the
possession
Limitation Act, in the absence of specific acts of adverse pos-

treated as applying to acts of trespass of the
committed by the defendants on land which
part of the holding of occupancy raiyats in the
position of the defendants, (3) to regard an occupancy
raiyat as a landlord within the meaning of S. 64 of the

a right to hold it for the purpose of cultivation, notwithstanding that they might not have actually cultivated the whole of it. (*Courtney Terrell, C.J. and James, J.*) CHANDRA MOHAN SINGH *v.* BUTU MIAN.

17 Pat. 210=175 I C 165=4 B R. 537=
10 R P. 586=1938 P.W N. 194=
19 Pat.L T. 133=A.I.R. 1938 Pat 222.

MANZUR ALI KHAN v. PETESHWARI PRASAD SINGH. 177 I.C. 52=11 R O. 13=

193

——Arts.

—*Alienation by trustee—Suit for recovery of possession—Defendants found not to be tenants—Limitation applicable—Adverse possession, when commences.*

Where a trustee or manager of a religious endowment grants a tenancy of property belonging
excess of his powers, the alienation is
alienor's tenure of office, and the alie
possession commences under Art. 144 of the Limitation Act only from the cessation of office of the alienating

had not proved his possession within the statutory period. (V
ALAM KHA

A.I

——Art

—*Alienation by trustee of trust property as own property—Possession of alienee—If adverse from start.*

A trustee of a choultry alienated property belonging to the choultry as his own. He did not purport to pass title as manager of the choultry

A.I.R. 1938 Mad. 60.

——Art. 144—Applicability—Ali
—Subsequent alienation by alie
against second alienee—Limitation.
ACT, ART. 44.

——Art 144—*Applicability and scope—Suit for possession of immovable property—Plea of adverse possession.*

It is clear from the position in which
and from the words used in that arti
residuary article in respect of all suits
immovable property to which no othe
cally applies. Where the plaint in ter
sion of immovable property and the d
adverse possession, the suit falls under A
nekar and Wadia, JJ.) NARAYAN
GOUDA. 40 B

——Art. 144—*Applicability—Pro*
Agra Tenancy Act.

Art. 144 of the Limitation Act does
proceedings under the Agra Tenancy Ac
the 1st schedule of the Act prescribed
Act which has not been applied to th
because it has its own schedule dealing
(*Darling, S. M. and Bomford, J. M.*)

v. RANG NATH TIWARI. 1938 A.W.R. (B.R.) 363= 1938 R. D. 602.

40 Bom L R. 166.

——Art. 144—Applicability— Suit for possession under a lease. *See* LIMITATION ACT, ARTS 113 AND 144. 1938 A L J. 561.

ARTS. 137, 144 AND 148.

176 I C. 923=A.I.R. 1938 Rang. 65.

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ART.
F B).
nating
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alleg-
iment,
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reason
d the policy behind the statutes of limitation
be gravely disturbed. Hence, if a trustee
tes property which he honestly believes to be his
own but which on a true construction of the deed of

——Art. 144—Sarva *inam land — Alienation by holder—Suit by successor to set aside—Limitation—Starting point.*

A suit to set aside an alienation of *sarva* inam pro
be brought with
ienating inamdar.
the death of the
RAMCHANDRA v.
86=11 R B. 36=
40 Bom L.R. 400=A.I R. 1938 Bom. 331.

new cause of action.

Wadia, JJ.)
om L R. 1131.
id and reda-

LIMITATION ACT (1908), Art. 144.

Adverse possession of an alienee dates from the moment the alienee is without lawful title. That time is, in the case of a void transfer, the date of the transfer, in the case of a voidable transfer, the date of the avoidance and in the case of the transfer effective for a ... the ... *and* ... IVA ... 60.

——**Art 144**—*Suit by auction purchaser for possession within 12 years—Previous possession by defendant*—

...

J.) UCHMATAN *v.* RAJENDRA NATH SANYAL. **67 C L J 115 = A I.R. 1938 Cal 689.**

——**Arts 145 and 49**—*Applicability—Pro-notes left with another either as security or for safe custody—Suit in respect of*

Where certain promissory notes remain with defendant having been left by the plaintiff as security or at ...

1938 P.W.N 436 = A.I.R 1938 P C 110 (P C)

——**Art 148**—Applicability—Suit for possession, by purchaser from non-redeeming co-mortgagor on payment of his share of amount due *See* LIMITATION ACT, ARTS 137, 144 AND 148 **176 I.C. 923 = A I.R 1938 Rang 65**

...

RAM. **1938 N L J. 183.**

——**Art. 164**—*Knowled... proof.*

Where an application to s... is made more than 30 days ... the onus is on the defendant ... the same within 30 days of h...

The onus cannot be shifted by the bare denial of knowledge made by the defendant. (*Patterson, J.*) BENGAL COAL CO, LTD. *v.* BAUL CHANDRA MUKHERJI. **177 I.C. 1003 = A I R 1938 Cal 535**

——**Arts 166-181**—*Applicability—Application by a party under S 47, C. P. Code, to declare a sale a* ...

... is ... tion ... S. ... for ... cul- ... of the Limitation Act (*Nasim Ali and Mukherjea, JJ.*)

LIMITATION ACT (1908), Art. 181.

NIRODE KALI ROY CHOUDHURY *v.* RAI HARENDRA NATH. **I L R. (1938) 1 Cal. 280 = 178 I C. 540 = 42 C.W.N. 87 = A.I.R. 1938 Cal. 113.**

——**Art. 166**—*Applicability—If restricted to applications under O. 21, Rr. 72 and 89 to 91.*

The applicability of Art. 166, Limitation Act, is very wide, and there is no ground for holding that it is restricted to applications under O. 21, Rr. 72 and 89 to 91, C. P. Code. It applies to all applications under S 47 of the Code (*Gruer, J*) MAROTI *v.* KISANLAL. **1938 N.L J. 389 = A I.R. 1938 Nag. 558.**

... *Collector's sale.* ... xecution sale by the ... 30 days of the date ... e bid (*Greenfield,* ... **1938 N L J. 10.** ... on under O. 21, R. ... ng point. *See* C. P. CODE, O. 21, R. 9?. **42 C W.N. 478.**

The Limitation Act does not apply to proceedings under the Companies Act, when a member against whom an ... of con- ... ation, it ... stituted ... on Act. ... atives is ... d on the ... lly falls ... *C.J. and James, J.*) SUMITRA KUER *v.* SITAMARHI SUGAR WORKS, LTD. **173 I C. 898 (1) = 10 R.P 464 (1) = 4 B R. 352 = 19 Pat L.T 214 = A.I R. 1938 Pat. 287.**

——**Art 181**—Applicability—Application by a party under S 47, C. P. Code, to declare a sale a nullity. *See* LIMITATION ACT, ARTS. 166 AND 181. **42 C W N 87**

...

for restitution—Limitation—Starting point.

...

lower appellate court accepting the appeal An unsuccessful attempt by the other party to get that decree reserved in further appeal cannot give a fresh start for the purposes of limitation so far as the applicant for restitution is concerned. (*Addison and Abdul Rashid, JJ.*) THE PUNJAB NATIONAL BANK LTD., DELHI *v.* NANHE MAL JANKI DAS. **I.L R. 1938 Lah. 571.**

——**Art. 181**—*Applicability — Application under S. 144—Tenant ejected by landlord but restored to possession in appeal or revision—Application for mesne profits for period of dispossession—Starting point of limitation.*

An application under S 144, C. P. Code, is not an application in execution, and is governed for ...

MANZUR ALI KHAN v. PETESHWARI PRASAD SINGH. 1938 A.

——Arts. 142
—*Alienation by trustee—Suit for recovery of possession—Defendants found not to be tenants—Limitation applicable—Adverse possession, when commences.*

Where a trustee or manager of a religious endowment grants a tenancy of propert excess of his powers, the alienor's tenure of office, possession commences under Act only from the cessation trustee But where the tru tion by way of sale purports perty as his own, his act amounts to a repudiation of the trust and the possession of the vendee will be adverse from the date of the alienation Where in a

period. (V ALAM KHA

A I

——Art

——Art 144—*Applicability an possession of immovable property—Plea of adverse possessio*

It and residu immo cally sion adver

nekar and Wadia, JJ.) GOUDA.

——Art. 144—*Applic Agra Tenancy Act.*

Art. 144 of the Limitation Act does not apply to the proceedings under the Agra Tenancy Act, as it comes in the 1st schedule of the Act prescribed Act which has not been applied to th because it has its own schedule dealing (*Darling, S. M. and Bomford, J. M.*)

v. RANG NATH TIWARI. 1938 A.W.R. (B R.) 363=

40 Bom L R. 166.

——Art. 144—Applicability— Suit for possession under a lease. *See* LIMITATION ACT, ARTS. 113 AND 144. 1938 A.L J. 561.

144. 40 P L R. 319=A I R. 1938 Lab. 369 (F B.).

——Art 144—*Computation — Trustee alienating property honestly believing it to be his own—Property*

A I R. 1938 Mad.

d — *Alienation by ide—Limitation—*

of *sarva* inam pro- be brought with- ienating inamdar. the death of the RAMCHANDRA v. . 86=11 R B. 36= 40 Bom L R. 400=A I R. 1938 Bom. 331.

new cause of action.

existence on the he becomes ble properties challenge and ossession runs is a minor at ains majority. and is subse- highest Court of e held that the of the property ghest Court of appeal. The cause of action for a suit for possession of the property by him accrues in any event on his attaining *Wadia, JJ.*) om L R. 1134. *id and Wada-*

LIMITATION ACT (1908), Art 144

Adverse possession of an alience dates from the moment the alienee is without lawful title. That time is, in the case of a void transfer, the date of the transfer, in the case of a voidable transfer, the date of the avoidance and in the case of the transfer effective for a period (whether because of estoppel or otherwise), the date of the termination of the period (*Kamesam and Stone, JJ.*) VENKATASUBRAMANIA AYYAR v. SIVA-

dant, having been left by the plaintiff as security or at

purchaser from non redeeming co-mortgagor on payment of his share of amount due *See* LIMITATION ACT, ARTS 137, 144 AND 148 **176 I.C. 923= A.I.R. 1938 Rang 65**

ledge in such a case time can be extended under S. 5 of the Limitation Act. (*Niyogi, J.*) BHIKAJI v. SAMBHURAM. **1938 N.L.J. 183**

——**Art. 164**—*Knowled*

proof

Where an application to s

is made more than 30 days

the onus is on the defendant

the same within 30 days of his knowledge of the decree The onus cannot be shifted by the bare denial of knowledge made by the defendant (*Patterson, J.*) BENGAL COAL CO., LTD. v. BAUL CHANDRA MUKHERJI.

——**Arts**

party under

the sale is

47, C. P. Code, to have it

setting it aside for safety's

ties, the proper article is Art 181 and not Art. 166 of the Limitation Act (*Nasim Ali and Mukherjea, JJ*)

LIMITATION ACT (1908), Art. 181.

NIRODE KAI

NATH.

——**Art.**

cations under

The applicability of Art. 166, Limitation Act, is very wide, and there is no ground for holding that it is restricted to applications under O. 21, Rr. 72 and 89 to

the Companies Act, when a member against whom an

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160 of the Companies Act and on the

member the liability automatically falls

entatives. (*Courtney Terrell, C.J. and*

JMITRA KUER v. SITAMARHI SUGAR

173 I.C. 898 (1)=10 R P 464 (1)= 4 B R. 352=19 Pat L T. 214= A.I.R. 1938 Pat 287.

——**Art 181**—Applicability—Application by a party under S 47, C. P. Code, to declare a sale a nullity. *See*

40 P L R. 692=A.I.R. 1938 Lah. 456.

——**Arts. 181 and 182**—*Applicability—Applications for restitution—Limitation—Starting point.*

under Art. 181 should be counted from the decree of the lower appellate court accepting the appeal. An unsuccessful attempt by the other party to get that decree reserved in further appeal cannot give a fresh start

v. NANHE MAL JANKI DAS. **I.L.R. 1938 Lah 571.**

——**Art. 181**—*Applicability — Application under*

ord but restored to pos-

Application for mesne

tion—Starting point of

An application under S. 144 C. P. Code, is not an application in execution,

ied for purposes of

limitation by Art. 181 of the Limitation Act, the right to apply, in the case of a person who is ejected from possession and subsequently restor
or revision, for recovery of
of his dispossession, accrues
been restored to him in purs
order of ejectment in appea
tion can therefore be made at any time within three years after the date of restoration of possession. (*Darling, S.M. and Bomford, J.M.*) SURYAPAL SINGH *v.* BIJAI RAM. 1938 A W.R. (B R.) 113= 1938 R D. 182.

——Arts 181 and 182—*Applicability—Decree for possession on payment of money in future—Execution—Limitation for execution.*

Art 182 of the Limitation Act has no application to the execution of a decree for possession of immovable property conditional on the payment of a sum of money on a future date. Art. 181 is the article applicable to a application for execution of such a decree; and tin begins to run from the date of the decree or at any ra on the date fixed for payment of the amount. (*Beaumont, C J. and Wassoodew, J*) GOPAL SATTU DNYANU MARUTI. I L R. 1938 Bom. 649 177 I C. 499=11 R B. 96= 40 Bom.L R 512=A I.R. 1938 Bom 367.

——Arts 181 and
suit in High Court—Ap
sale—Limitation

An application for a fir
gage suit in the High Court, under
Code, is governed by Art. 181 of
and not by Art. 183. It is not the
limitation applicable to an applica
(*Engineer, J.*) JESINGLAL KALIDAS *v.* GANGADHAR MAHADEO. I L.R. 1938 Bom. 273= 177 I.C. 470=11 R B. 82=40 Bom L.R. 507= A I.R. 1938 Bom. 354

——Art. 181—*Compromise instalment decree in the form of a preliminary foreclosure decree—Provision for application for final decree in case of default in the payment of any instalment—Starting point for application for final decree.*

Where a compromise decree in the form of a prelimi-
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1938

——Art. 181—*Obstacle to execution—Removal by order of competent Court—Limitation for execution—Starting point.*

Where there is an obstacle to the execution proceedings, for instance, possession of the property by a third party, as soon as that obstacle is swept away by a Court of competent jurisdiction declaring the title of the judgment-debtor to
duty again arises
tion proceedings
fact that that pa
J.) KANWAR
MUNSHI LAL.
A.I.R. 1938 Lah. 695.

——Arts. 182 and 183—*Applicability—Payment order by District Judge under S. 164, Companies Act.*

of S. 164, Companies Act, the
e same jurisdiction and the same
Court, yet the District Judge by
not become the High Court for
Limitation Act. Hence to a payment order passed by the District Judge under powers conferred by S. 164, Art. 183 has no application and the only article applicable is Art. 182. (*Dalip Singh, J*) PANNA LAL JAIN *v.* JAIN BANK OF INDIA, LTD, LAHORE. 178 I C. 288=A.I R 1938 Lah. 368.

——Art.
The provi
not too tech
not to be str
has not paid his debt and the words should be liberally interpreted in favour of the decree-holder. (*Venkata-*

While all the paragraphs in Art. 182 excepting para. (5) deal with the question of what is the time from which limitation begins to run in the case of a first ap-

10 R.A 650=1938 A.L R. 378= 1938 A.W.R. 115 (H C.)=1938 A.L J. 117= A.I.R. 1938 All. 210.

——Art. 182—Starting point—Decree on payment of court fee. *See* C. P CODE, S. 149—APPLICABILITY. 1938 A.W R. (H.C.) 538=A.I.R. 1938 All. 539.

——Art. 182—*Starting point—Preliminary decree for partition—Order for costs being separately executable—Execution of latter—Limitation—Starting point.*

Where an order or decree, separately executable, is

tation. (*Mohamad Noor and Rowland, JJ.*) SHAIKH SALAHUDDIN AHMAD *v.* IMAMUDDIN. 175 I.C. 45=4 B.R. 504=10 R.P. 569= A.I R. 1938 Pat. 188.

——Art. 182 (1)—*Date of the decree—Copy of decree through Court's mistake bearing date on which it was drawn up instead of date of judgment—Application for*

execution which was within limitation from the date of

the decree as stated in th
beyond limitation from th
to bear, *i e*, the date of p

Held, that the decree h
of the decree and sho
Court's mistake. The
time-barred. (*Agarwala,*
AZIZ FATMA. 174 I C. 397 = 4 B.R. 427 = 10 B.P. 513 = A.I R. 1938 Pat. 149

——Art 182 (1)—*"Date of the decree or order"—Partition suit—Preliminary decree coupled with order for costs—Final decree not incorporating earlier order for costs—Execution for costs—Limitation—Starting point—Date of preliminary decree or date of final decree*

It is open to a Court in a suit for partition either to allow costs at the time of the preliminary decree or to defer p
decree,
earlier s
ment ha
in the fi
payment
the final
costs is made at the time of the preliminary decree,
application for execution of that order must be filed within three years of the preliminary decree, the party in whose favour the order is made cannot wait for the passing of the final decree and then apply for execution taking the date of the final decree as the starting point. It is no doubt open to him to apply to the Court to amend the final decree by incorporati
order for costs, and if that is done,
in three years of the final decree
(*Khaja Mohammad Noor and Roul*
HUDDIN AHMAD *v* IMAMUDDIN 19 Pat L T. 798

——Art 182 (2)—Scope—If governs S. 48, C. P. Code—Appeal—Dismissal for default—Starting point for execution. *See* C. P. CODE, S 48. 1938 P.W N 449.

——Art. 182 (2)—*Appeal rejected for non payment of court-fee—Execution of decree—Limitation—Starting point.*

Where a memorandum of appeal filed with deficit court-fees was neither registered nor numbered as an appeal but was rejected for non payment of the requisite

the execution of the decree is the date of the trial Court's decree and not the date of the order of the appellate Court rejecting the memorandum of appeal. (*Derbyshire, C J and Mukherjea, J.*) PRODYOT COOMAR TAGORE *v* MATHUAR KANTA DAS 178 I.C. 62 = 42 C W N. 698 = A I R. 1938 Cal 533

——Art 182 (2)—*Starting point—Appeal insufficiently stamped—Dismissal.*

Where an appeal is preferred on insufficient court fee

SAD *v.* RADHEY SINGH. 173 I.C. 615 = 4 B R 303 = 10 B P. 428 = 19 Pat L T 243 = A.I R. 1938 Pat 79

——Art 182 (2)—*"Where there has been an appeal"—Meaning of—Appeal from order refusing to set aside ex parte decree.*

the meaning of the clause. (*King and Krishnaswami Aiyangar, JJ.*) SRI RAMACHANDRA RAO *v.* VENKATESWARA RAO. 1938 M.W N. 1155 = 48 L W. 751 = (1938) 2 M.L.J. 1048.

——Art 182 (5)—"Application in accordance with law"—Assignment of decree benami—Application for execution by real assignee—If saves limitation—Declaration in suit that latter is real assignee under deed—Effect of *See* C. P. CODE, O. 21, R. 16. 17 Pat 223.

DWARI. 42 C.W N 842.

——Art. 182 (5)—*Application in accordance with law—Death of decree-holder—Execution application preferred by third party—Joint right of applicant and widow of decree-holder alleged—Widow asserting her sole right—If can operate as step in aid of execution.*

be brought on record as the legal representatives and that the decree should be executed for their joint benefit. The widow denied the nephew's right and claimed to be brought on record as the sole legal representative and to have the decree executed for her sole benefit.

Held, that such an application could be deemed in law to be that of the widow and would be a valid step-in-aid of further execution (*Venkatasubba Rao and Abdur Rhaman, JJ.*) ANNAPURNAMMA *v.* VENKAMMA. 1938 M.W.N. 191 = 47 L W. 693 = A I R 1938 Mad 323 = (1938) 1 M L J. 135.

ance with law"—Application as required by O 21, accordance with law—dismissing application hin time limited—If not in accordance with law.

An execution application can be held to be not in accordance with law or if the defects or omissions to be found therein were such as to make it impossible for the Court to issue execution upon it, and not merely because it was defective in some minor particulars. An omission to comply with O 21, R 12, C. P Code, *viz.*, failure to annex a *talika* or inventory of the pro
se be held to render
nce with law, in the
hether the decree-holder
t any property belong-
n his possession or whether any inventory of the properties is necessary at all, and when it is not known in what mode the assistance of the Court is required in the application of the decree-holder. The question cannot be decided merely with reference to an order dismissing such an application on the ground that no inventory was supplied

LIMITATION ACT (1908), Art. 182.

(*b*). 1938 P.W N. 73.

——Art. 182 (5)—*Step in aid—Application for exe-*

v. SAYAD HAMID ALI.

——Art 182 (5)—*Step in aid*

ment of money deposited.

Where one of the instalments due has been deposited in Court an application by the decree-holder to withdraw the money is a step in aid of execution. (*Bennet, A. C. J. and Ganga Nath, J.*) LATAFAT ALI KHAN *v.* KALYAN MAL I L R. 1938 All 342=175 I C. 136=10 R A 650=1938 A L R. 378=1938 A.W.R. 115 (H C)=1938 A.L J. 117=A.I.R. 1938 All. 210.

——Art 182 (5)—*Step in-aid—Application for*

act, when there is no dispute about it. (

AMOLAK CHAND *v.* HOSHIAR SINGH. 175 I

10 R L. 698=39 P.L R 1027=A.I R 1938 Lah 138

——Art 182 (5)—*Step in-aid—Application to recover monies deposited in Court.*

——Art. 182 (5)—*Step-in-aid—Application for substitution of name in decree.*

A mere application for substitution of names in place

An application for transfer of a decree is a step in aid of execution. The fact that the decree-holder did not pay batta for notice is not material. It is not necessary to satisfy the Court that the step was taken with a genuine intention of obtaining

(*Weston.*) JASRAJ RIKHRAJ *v.* GHISOO LAL 1937 A M

——Art 182 (5)—*Step-in aid—Application*

Court.

Application for execution of a decree made to a wrong Court cannot be considered as a step in-aid of execution. (*Bhide, J.*) ABDUR RAHIM *v.* FATEH MOHAMMAD. 177 I.C. 483=10 R.L. 329=40 P L R 721=A.I.R. 1938 Lah 451.

LIMITATION ACT (1908), Art. 182.

under

prayors is such tation *and* UMU-525=478=710.

——Art. 182 (5)—*Step in aid—Award under Co-operative Societies Act—Application to Collector for execution—If saves limitation in respect of subsequent application to Court—Bombay Co-operative Societies Act, S* 59 (1) (b).

The "Collector" acting under S. 59 (1) (*b*) of the

enforce an award under S. 59 (1) (*b*) of the Bombay Co operative Societies Act cannot therefore be regarded as an application made to a Court, and proceedings so taken under S 59 (1) (*b*) are not steps in-aid of execution so as to save limitation under Art. 182 (5) of the Limitation Act in respect of a subsequent application made to a Civil Court for execution. (*Rangnekar and Wadia, JJ.*) MARATHA CO-OPERATIVE CREDIT BANK OF DHARWAR *v.* KASHAV TRIMBAK HUNDE. 177 I.C. 897=40 Bom.L R. 889=A.I R. 1938 Bom. 424.

Art. 182 (5) of the Limitation Act. (*Tek Chand, J.*) MT. HARBANSO *v.* MUNSHI RAM. 40 P L.R 25.

——Art. 182 (5)—*Step in-aid of execution—Claim O. 21, R. 63—If amounts to.*

holder applied for execution of his decree d certain property. A third party put in a attached property which was upheld and nent was raised. Thereafter the decree- a suit under O. 21, R. 63, C. P. Code, which was dismissed, as also an appeal and a second appeal therefrom. The decree holder then applied for execution as against other properties of his judgment- ter his first execution of the dismissal of It was held that the step in aid of execu- made to a proper *J. and Bose, J.*) 1938 N L J. 336=A I.R. 1938 Nag 534

——Art 182 (5)—*Step-in aid—Notice under O. 21, R. 22, C. P. Code—Effect of.*

Quaere Whether the issue of a notice or giving leave,

——Art. 182 (5)—*Step in-aid—Step taken by person claiming adversely to decree holder—If available to decree holder as saving limitation.*

Steps taken by a person claiming adversely to the decree holder cannot be taken advantage of by the

LIMITATION ACT (1908), Art. 182.

decree holder as steps in aid of execution. Though the decree holder prefers objections to the proceedings taken by the adverse claimant, and though there might be an agreement between the decree holder and the rival to act in a particular manner; the steps taken by the rival claimant cannot enure to the benefit of the decree holder nor can the judgment debtor be deprived of his right to plead limitation by any agreement between persons with interests hostile to each other, who have been carrying on litigation amongst themselves. (*Varma, J.*) ACHUTANAND GIRI, MAHANTH *v* SARAN SINGH.
1938 P.W N. 652=A I.R. 1938 Pat. 531.

——**Art. 182 (5)**—*Step-in aid—Transferee of decree—Application by under O. 21, R. 16, C. P. Code—Dismissal for non-payment of process-fee—If step-in aid.*

An application by the transferee of a decree for execution under O. 21, R. 16, C. P. Code, is a step in aid of execution under Art 182 (5) of the Limitation Act, although such application is dismissed for non payment of process-fees and for failure to serve notices on the judgment-debtors (*Divatia and Sen, JJ.*) DAYALBHAI *v.* DAYABHAI. 176 I.C 152=11 R B 17
40 Bom.L.R 411=A I R 1938 Bom 309

——**Art. 182 (5)**—*Step in aid—What is—Application to transfer decree—Transferee Court jurisdiction to execute the decree—Effect.*

An application to transfer a decree to

SITA RAM RAI *v* MADHO PRASAD.
1938 A W.R. (H.C.) 763=1938 A.L J. 1128

movable property is stayed on the judgment debtor giving security for mesne profits accruing during the pendency of the appeal against the decree, an application filed after the dismissal of the appeal for the realisation of mesne profits against the surety is governed by Art. 182 (7) and not by Art. 181 of the Limitation Act. (*Abdul Rashid, J*) NANU
40 P L R. 473=A

——**Art. 182, Expl. 1**—*See,*
debtor's—Execution against one—Insolvency proceedings against same—Limitation for execution against others—If saved—Provincial Insolvency Act, S 78 (2).

supervening of insolvency so far as he is concerned, cannot keep the remedy of the decree-holder alive

LUNACY ACT (1912), S 48.

——**Art. 183**—Applicability—Mortgage suit for sale in High Court—Application for final decree—Limitation. *See* LIMITATION ACT, ARTS. 181 AND 183.
40 Bom.L R. 507.

——**Art. 183**—"*Revivor*"—*Meaning of—Order of attachment after notice—Notice to minor judgment-debtor not served on proper guardian—Effect—If order of attachment operates as revivor.*

In order to constitute a revivor of a decree there must be expressly or by implication a determination that the decree is still capable of execution and the decree-holder is entitled to enforce it. An order of attachment of the properties of the judgment-debtors after notice to them under O. 21, R. 22, C. P. Code, amounts to a revivor of the decree, although the notice to one of the judgment debtors who is a minor is not served on the proper guardian of the minor, but on a wrong guardian. (*Fazl Ali and Agarwala, JJ*) SARJU SINGH *v* BHAGWAT PRASAD SINGH. 176 I C. 566=
1938 P.W.N. 259=4 B R. 738=11 R P 91=
19 Pat L T 193=A.I.R. 1938 Pat 372.

——**Art 183**—"*Revivor*"—*What constitutes—Order containing qualification as to limitation and without prejudice to judgment debtor's plea of limitation—If operates as revivor.*

cannot operate as a revivor. (*Macklin and Sen, JJ*) HASAN *v.* ISAP. 40 Bom L R. 1180.

maintenance of the lunatic He must under the provisions of S 88 of the Act apply to the High Court or the District Court for such an order (*Blacker J*) MAHOMED ZAMAN *v.* EMPEROR 40 P L R. 496

——**S 48**—*Construction and scope—Enquiry under—Nature of—Question of title to property—If can be*

but permis-
retion is given
to the Court to make an order under the section. The words " concerning any matter whatsoever connected with the lunatic or his estate" are very wide, and
he
es
rt
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to
matters concerning lunatics and their estates. The Court should, however, refer the parties to a regular suit
be complex or
be voiced by
niently be dealt
cated in S 48
F MADRAS *v.*
M W N 1143=
2 M L J. 1072.

LUNACY ACT (1912), S. 48.

——S. 48—*Scope—"Petition"—Procedure — Separate original petition—Necessity.*

The use of the word "petition" in S. 48 of the Lunacy Act is used in contradistinction to a "suit" and indicates

SAHIB.

48 L W.

MADRAS ACTS AND R

Abkari Act (I of 18
Agriculturists Relie
Borstal Schools Act (V of 1926).
City Civil Court Act (VII of 1892).
City Municipal Act (IV of 1919).
City Tenants Protection Act (III of 1922).
Civil Rules of Practice.
Court of Wards Act (I of 1902)
Criminal Rules of Practice.
Debt Conciliation Act (XI of 1936).
District Municipalities Act (V of 1920)
Electoral Rules
Estates Land Act (I of 1908) as amended by Act (XVIII of 1936).
Gaming Act (III of 1930).
Hereditary Village Offices Act (III of 1895).

Land Encroachment Act.
Local Boards Act (XIV of 1920)
Marumakkathayam Act (XXII of 1933).
Prevention of Adulteration Act (III of 1918)
Prohibition Act
Recovery of Rent Regulation (XXVIII 1802).
Revenue Boards Standing Orders
Revenue Recovery Act (II of 1864).
Subordinate Collectors and Revenue Malve sasion Amendment Regulation (VII 1828).
Suppression of Immoral Traffic Act (V of

cases where a person is ...
to liability in the clause is wide enough to cover every person who is in any manner liable, either because he is

mortgage and can therefore claim the benefit of the Act ... an agriculturist. (*Varadachariar and Abdur JJ.*) PERIANNA GOUNDAN *v.* SELLAPPA ...N. 48 L.W. 954=(1938) 2 M.L.J. 1068.

7—*Scaling down of debt—Mortgage debt ...se of power of sale under S. 69, Transfer of ... 1882—Failure of creditor to scale down ... injunction to prevent sale—Maintaina-*

...reditor in exercise of his power of sale ... the Transfer of Property Act, 1882, was ...

the sale,

Held, that the suit was competent and that as the sale

scaling down debt—Temporary injunction to restrain sale—Power of Court to issue.

It is implied in S. 7 of the Madras Agriculturists ... creditor to scale ... debtors. There is ... the scaling down ... It will be only in *a case in which the creditor does not scale down* his claim in accordance with the provisions of the Act that the intervention of the Court will be necessary. If a creditor attempts to exercise his power of selling the

(1938) 2 M.L.J. 920.

——S. 8—*Applicability and scope—Purchase of part property at sale in execution of money ... 1930—Sale by purchaser to another in ...n mortgage decree—Right of second ... relief under Act—Relief if confined to*

...ndant executed a mortgage deed in favour ...iff on 27—7—1929. In execution of a ... against the mortgagor the 8th defendant

perty only in 1933 and his liability was not one subsisting prior to 1—10—1932.

Held, that the 9th defendant's liability was traceable to the original mortgage, that his purchase was not the basis of any new liability, and since the liability

1926), S. 8—Consecutive sentences—Legality of. *See* CR. P. CODE, S. 397. 1938 M.W.N 352.

——S. 8—*Consecutive sentences—Offender under sentence of detention—Order in later case directing sentence*

The M

provision

therefore,

must take effect at once and cannot be postponed. An order directing that a sentence of detention shall take effect from the date of expiry of a previous term awarded in a previous case is illegal (*Horwill, J.*) NONDI, *In re.* 177 I.C. 554=11 R.M. 343=39 Cr.L.J. 906= 1938 M.W.N 535=47 L.W. 636= A.I.R. 1938 Mad. 653=(1938) 1 M.L.J. 761

——S 8—*Consecutive sentences under—Legality.*

One sentence of detention imposed upon an offender under S 8 of the Borstal Schools Act should not be ordered to run after the expiry of another sentence imposed upon the same offender. A direction to that effect, *i.e.*, that the sentence of detention in one case should take effect after the expiry of the sentence of detention in another case is not in consonance with law (*Pandrang Row, J.*) ALLAH BAKSH, *In re* 176 I C 763=11 R M 167 (1)=39 Cr L J 839= 47 L W 321=A I R. 1938 Mad 567

MADRAS CITY CIVIL COURT ACT (VII OF 1892), Ss. 3 and 5 (1)—*Scope and effect—Suit pending in Court of Small Causes—Transfer to City Civil Court—Jurisdiction of latter Court to try—C. P. Code, S. 24 (a)*

deposit of license fee—Absence of answer from Corporation—Effect—Conviction for doing business without license—Sustainability

S. 365 (6) of the City Municipal Act is subject of Sub-S. (10) of S. 365, under which, if an applicant for license does not receive orders from the Corporation

-pplication

year for

lies for a

answer,

created after Act to take effect after Act—Right of lessee or tenant to benefit of Act.

The Madras City Tenants' Protection Act cannot

passing of the Act

is after the pass-

is in renewal of a

the Act, by reason of S. 1 (*iii*) of the Act does not apply at all, the tenant cannot claim the benefit of the Act by reason of S 12, because the Act, which cannot apply by reason of S. 1 (*iii*) is wholly inapplicable and not merely partly. (*Beasley, C J. and Cornish, J*) RANGANATHAM CHETTY *v.* ETHIRAJULU NAIDU. 1937 M.W.N. 1315

MADRAS CIVIL RULES OF PRACTICE, Rr. 114 to 120—*Validity—Rules made under Code of 1882 and not re enacted under Part X of New Code of 1908—Inconsistency with O. 20, R. 17—Effect of—If invalidates Rr. 114 to 120.*

The Civil Rules of Practice made under the C. P Code of 1882, but not re-enacted and published in accordance with the procedure prescribed in Part X of the Code of 1908, are invalid if and in so far as they are inconsistent with any of the rules of the First Schedule of the Code of 1908. Rr 114 to 120 of the Civil Rules of Practice are inconsistent with O. 20, R. 17, C P, Code of 1908, in so far as the former require and insist that questions of irregularity or fraud should be raised and decided before the preliminary decree is passed and before the case is remitted to the Commissioner for

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as not bound by the liquidator's order.

Held, that the liquidator has jurisdiction to decide who are members and who are not. There is no bar to the

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(1938) 2 M.L.J. 980.

——S. 51 (5)—*Construction—'Revise any decision'—Meaning of—Power to amend or correct mistakes.*

The words "revise any decision" in S. 51 (5) of the Co-operative Societies Act are used in the widest sense is practically equivalent to "correct" or "amend". To substitute one figure or one survey number for another in an award is an act of revision within the meaning of S. 51 (5). Where an award on a mortgage executed by a member to the society contains a wrong survey number, repeating the mistake in the mortgage deed and the

1938 O.L.R. 61=1938 O.A. 54=1938 A.L.R. 77=A.I.R. 1938 P.C. 34=(1938) 1 M.L.J. 426 (P.C.)

the Act is therefore necessary in the case of a suit in respect of such property. Consequently the period of

served—Subsequent death of intending transfer by him of subject matter—Suit b

fers his interest in the subject matter to another does not render a fresh notice to be given by the successor in-interest or *transferee before he could file a suit.* A devolution or transfer of the subject matter does not affect the object for which such notice is required to be given.

Abdur Rahman, J.—There is nothing in S. 49 of the Act which would make another notice essential so long as the suit is based substantially on the same cause of

can be raised against him on that score. (*Pandrang Row and Abdur Rahman, JJ.*) ZAMINDAR OF SIVAGANGA *v.* MUTHIAH CHETTIAR.

I.L.R. (1938) Mad. 873=176 I.C. 872=11 R.M. 188=1938 M.W.N. 53=47 L.W. 278=A.I.R. 1938 Mad 280=(1938) 2 M.L.J. 1016.

MADRAS CRIMINAL RULES OF PRACTICE, R. 263—*Meaning and scope of*

R 263 of the Criminal Rules of Practice cannot be read as saying that a District Magistrate shall never refer an acquittal to the High Court. If it be read so,

ceed with the execution. A sale held by the Court in contravention of S. 25 is entirely without jurisdiction.

to relief. *See* T. P. ACT, SS. 105 AND 107.

47 L.W. 668.

dedicated and
h—If exempt

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of the District
n respect of a
dedicated to

being a choultry if and when circumstances change. (*Wadsworth, J.*) RAJAHMUNDRY MUNICIPAL COUNCIL *v.* MALLAYYA. 48 L.W. 417=(1938) M.W.N. 952=A.I.R. 1938 Mad. 923=(1938) 2 M.L.J. 639.

——S. 93—*Profession tax—Liability for—Person holding appointment—Actual residence—If necessary.*

The test of liability to profession tax in the case of a person holding appointment is not personal presence

MAD. DIST. MUN. ACT (1920), S. 93.

within the municipality. If he holds appointment within the municipality for 60 days he is liable to profession tax. (*Lakshmana Rao, J.*) KRISHNAN NAMBIAR *v.* MUNICIPAL PROSECUTOR, CALICUT. 47 L W. 771 = (1938) M.W N. 536 = 177 I.C. 560 = 11 R M. 345 = 39 Cr L J. 905 = A.I.R 1938 Mad 709 = (1938) 2 M L J. 31.

——S. 93 and Sch. IV, Rr 18 and 19—*Scope and effect of—Government Officer having quarters within Municipality going abroad on lea. the middle of half year—Salary received during abroad—If to be taken into account in assessing pr sion tax.*

in respect of his income will not exempt him from liability for profession tax to a Municipality Profession tax

year will not entitle him to withhold payment of profession tax on that part of his income or salary which he receives not in India but abroad. His profession tax has to be calculated on the whole of his half yearly income and not merely on that part of it which is actually received in India. (*Stodart, J.*) HILTON BROWN, *In re.* 177 I C. 605 (1) = 11 R M. 359 = 47 L.W

——S. 93 (1) (b)—*Li Actual residence for 60 days—If essential— Reside — S 3 (25)*

A person cannot be deemed to cease to reside in a house merely because he is absent from it if he has not abandoned his intention of returning. Nor can he be said to have abandoned his intention of returning when he merely signifies his intention of being absent at a hill-station for a certain period. The assessee had a house within a Municipality in which he actually lived for a week in August *i e* from the 1st to 7th April and from 9th to 30th September Between 7th August and 9th September he was absent at a hill station and before going to the hill station he informed the Municipality that he intended to be absent from 7th April till about

60 days in the ordinary sense of the term. The assessee, however, had resided within the meaning of S 3 (25) of the Act and had not ceased to reside within the Municipality during the period of his absence at the hill station (*Stodart, J*) VENKATACHALA MUDALIAR *v* CHAIRMAN, COIMBATORE MUNICIPALITY. 178 I C 499 = 48 L W 329 = 1938 M.W N 884 = A I R 1938 Mad 880 = (1938) 2 M L J 353

——S. 94 and Sch IV, R 17—*Transacting "business"—Meaning of—Depot for storing and distributing goods—If office or place of business*

An office is merely a place where business is transacted, and the general rule is business is transacted at the place where the contracts are made and where control is exercised and not at the place where the contracts are merely executed. A depot or warehouse where goods are

MAD. DIST. MUN. ACT (1920), Sch. IV, R. 13.

stored cannot be said to be the place where business is transacted where the depot keeper has in fact no control over the trade or business. Though he might sell goods there for cash, it cannot amount to transacting business when the price is fixed elsewhere at the head office, when the vendees are certain licensed persons approved by the principal office and when all the accounts are maintained in the head office. The depot in such a case is a mere

——Ss 177 and 339—*Applicability and scope—*

sanction was accorded. S. 177 is not restricted to the present owner of a building. It is intended to apply

itered into the contract that by reason of his is unable to comply with

IYAPURI CHETTIAR *v.* SALEM. 178 I C. 266 = 48 L W. 657 = A I R. 1938 Mad. 916 = 1938 M.W.N. 911 = (1938) 2 M L J. 579.

——S. 178—*Applicability — Owners of streets—Liability to conviction.*

The persons who are liable under S. 178 of the Madras District Municipalities Act are the owners or

A.I.R. 1938 Mad. 910 = (1938) 2 M.L J. 382

——S. 270-E—*"Cart stand"—Shed in which motor buses of owner stand at end of journey and where passengers alighted and new passengers get in for return journey—If " cart stand".*

The petitioner had a shed at *T*. His motor buses were taken to that shed on arrival at *T* the passengers in the bus alighted at the shed and the new passengers for the return journey took their seats in the buses there. *The buses did actually stand in the shed.*

Held, that the shed where the buses not merely stopped for a shorter or longer time, but did actually " " for the purpose of their owner's business, was a nd" in the sense in which that term is used in of the Madras District Municipalities Act.

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——S 339—*Applicability—Conviction under—Sustainability—Proof of ownership in land abutting road —If necessary*

To sustain a conviction under S. 339 of the Madras District Municipalities Act, it would not be necessary to prove that the accused had any ownership in the land

——Sch IV, R 13—*Revision of tax—Compliance of requirement of rule as to communication of order and direction to pay—If condition precedent to taking distress proceedings for non payment of tax.*

MAD. ELECTORAL RULES, R. 12.

When a revision is preferred against an assessment to house-tax, R. 13 of Sch. IV of the District Municipalities Act requires that the chairman should communicate the orders passed thereon to the assessee and also direct him to pay the amount fixed in revision. The obligation of fixing the tax on revision was on the Municipality and no duty was cast on he assessee to fix for himself, the amount he had to pay. It is also a condition precedent which the chairman had to perform before he could take the appropriate proceedings for non payment of the tax. Proceedings by way of distress without complying with the rule in question is not legal. (*Venkataramana Rao, J.*) PADMANABHA IYER *v.* COIMBATORE MUNICIPALITY. 177 I.C 512=11 R M. 342= 47 L.W 700=(1938) M.W N. 633= A I R. 1938 Mad 282=(1938) 1 M L J. 99.

MADRAS ELECTORAL RULES, Rr. 12(3) and (4) and 48—*Rule for forfeiture of deposit—If* ultra vires—*Meaning of total number of ballot papers and spoiled ballot papers in R. 12 (3) and (4)—Jurisdiction of Civil Courts—Suit that the interpretation of Election Rules by the Collector is wrong.*

as is implied in the term 'forfeiture' strictly used.

and

take

Rule

J.)

(1938) 2 M L J. 745.

MADRAS ESTATES LAND ACT (I of 1908, as amended by Act XVIII of 1936), S. 3 (2) (d)—*Lands in a shrotriem—Suit for rent for period before the coming into force of the Amending Act—Stay under S. 127 of Act VIII of 1934—Effect of the coming into force of the Amending Act of 1936—Act XVIII of 1936 S. 13.*

A suit for rent for the years 1920-1922 in respect of land in a shrotriem was decreed and Letters Patent ... inder ... o the ... Act ... Act were estates, was added, as it were, another category by the amendment of the S. 3 (2) (*d*), and the words should be read as if they were present throughout in the earlier and unamended Act. As S. 13 of the Act XVIII of 1936 provides that all proceedings stayed under S. 127 of Act VIII of 1934 shall be disposed of as if the Act 1908 as amended by the 1934 and 1936 Acts had been in force at the original institution of the proceedings, the shrotriem in question must be deemed to have always and throughout been an estate and as such the plaints should be returned for presentation to the proper Court *i.e.*, the revenue Court. (*Venkatasubba Rao and Abdur Rahman, JJ.*) KONDAPPA NAIDU *v.* MAHALAKSHMAMMA. 177 I C. 652=11 R.M. 366=1938 M.W.N. 102= A I.R. 1938 Mad. 339=(1938) 1 M.L J. 206.

MAD. ESTATES LAND ACT (1908), S. 26.

——**Ss. 3 (11), 24 and 30**—*Charges for water taken without permission of landlord—If rent—Suit to recover—Nature of—Proper forum—If an enhancement of rent.*

A claim by a landlord against a tenant for charges for water taken by him without permission for the purpose of raising wet crops on dry lands, is to be deemed to be rent within the meaning of the definition of 'rent' in S. 3 (11) of the Madras Estates Land Act as such a suit in ... or ... to ... be ... ne ... e- ... ot ... ne ... a- ... v. ... = ... = ...).

——**Ss 6 and 189**—*Scope—Private contract between* ... contract being ... the spirit of ... of a *bona fide* ... fference what- ... in favour of such a contract. An arrangement between the land holder and certain of his ryots by which the ryots in return for the conferment of occupancy rights by the landholder agree to pay an enhanced rent, though it may have been the result of a *bona fide* settlement of a doubtful claim with regard to the lands being part of an estate, is not such as can be enforced in a Court of law. (*Venkatasubba Rao and Abdur Rahman, JJ.*) ZAMINDAR OF KIRLAMPUDI *v.* LANKA APPAYYA. 177 I.C. 745=1938 M W N. 258=47 L W. 354= A.I.R. 1938 Mad. 504=(1938) 1 M.L.J. 384.

——**S. 26 (3)**—*Applicability—Conditions—Absence of relationship of landholder and tenant—Effect.*

S. 26 of the Estates Land Act has no application to any case in which the relations of landholder and tenant do not subsist The section contemplates a rent paying relationship. It has no application where there

has been a complete surrender by the landholder of the right to collect any rent whatever on the land in question, as for instance, where there has been an out and out grant of both warams. (*Wadsworth, J.*) PALANIAPPA MUDALIAR *v.* ABDUL SUBHAN SAHIB. 48 L.W. 549 = 1938 M.W.N. 1065 = (1938) 2 M.L.J. 977.

——S. 26 (3)—*Applicability—Land granted permanently—No rent payable for first seven faslis subsequently Rs. 19-12-0 per annum for ever—Suit rent—Lawful rent—Deed of grant not register*
Admissibility.

A predecessor of *P* granted certain lands to *D*.
terms of the grant were that *D* should remain perma
tly in possession of the land, that no rent at all
payable *for the first seven faslis* and subsequently the rent should be payable for ever at the rate of Rs. 19-12-0 per annum. *P* sued *D* claiming Rs. 959 7 0 as rent for three years *D* put forward the document embodying the terms of the grant made in his favour claiming that only Rs. 19-12 0 was payable per year It was contend-

Holder of—If ryot.

It is extremely doubtful whether S. 26 (3) of Madras Estates Land Act has any application to la
held free of rent. When there is no rent at all, it cannot be held that the lands have been held on a rate of
lower than the lawful rate payable, when land is
free of rent the person who holds the land cannot
ryot as defined by S. 3 (15) of the Act. (*Wadsworth,*
ADILAKSHMI DEVAMMA GARU *v.* APPA
1938 M W N 1134 = 48
(1938) 2 M

——S 30—*Scope and applicability of*

It is only in respect of advantages whic
said to have brought about a new *state* of
proceedings under S. 30 were contemplated and not for

NAMRAJU. I L R 1938 Mad 630 = 175 I C 818 = 11 R M 15 = 47 L W 179 = 1938 M W.N. 174 = A I R 1938 Mad 459 = (1938) 1 M.L.J. 204.

——S. 74—*Scope and object of—Dispute as to validity of adoption or claims of rival landlords—If can be settled under.*

S. 74 of the Estates Land Act was not intended to settle disputes regarding the validity of an adoption or the claims of rival landlords. It was intended to enable the Collector to ascertain under certain circumstances

——S 77—*Jurisdiction of Collector—Lands found cultivable about* 1900 *but subsequently built upon and occupied by buildings—Non payment of rent for* 20 *years—No proof of tender of patta—Express consent of landlord not proved—Inference—Suit for rent—Jurisdiction of Collector.*

hese lands was a
agriculture, though
purpose, (3) that
such an inference
lands were
that in the
lands were
as in force, a
Court of the
TIRUPATI
48 L W 611 = 1938 M W N. 1062 =
3) 2 M L J 829

1934), S 168—
—Collector and
raising rent be-
ntrols S 168 (2)

der S. 168 of the

general application (*Leach, C J. and Burn, J.*) RIOTS OF GARABANDA *v* ZAMINDAR OF PARLAKIMEDI I L R. (1938) Mad. 858 = 47 L.W. 181

MAD. ESTATES LAND ACT (1908), S. 205

——S.
—*Revisio*
If a lan
Act, and the ryots plead that they have paid rent to his adopted son and that no rent is payable, the Deputy Collector can only settle the disputes between the parties under S 75 (2) on the ground that the ryots have alleged that no rent was payable. The decision would then fall under S. 75 (8) (*b*) and be appealable to the District Judge, and the jurisdiction of the District Collector in revision would be ousted. Subject to a possible appeal to the District Court under S.75 (2) (*e*), the order of the Deputy Collector would be final and no application in revision would lie
ANDI SERVAI *v.*

(1938)

——S. 212 (1
cuse"—Obstruction by person declared by Civil Court to be absolute owner—Entry by person contrary to decision of Civil Court—Offence.

An obstruction is not without lawful excuse when it is made by a person who has been declared to be absolute owner of a certain property by the Civil Court, and when the person making the entry is asserting title to the property in spite of the decision of the Civil Court. Such obstruction is not an offence under S 212 (1) (*e*)

"Common gaming house"—Existence of restriction on use of gaming house by a section of the public—Place, if ceases to be common gaming house.

There is no warrant
gaming house as defined
Act cannot include any ga
any restriction on its use

(1938) 2 M L.J. 266.

——S 5—*Warrant under—Form and validity—Conditions.*

There is no prescribed form for warrants under S. 5. S. 5 does not require the Magistrate to record any where his reasons for believing any information the

MAD. HEREDITARY V. O. ACT (1895), S. 6.

fact that he
as a com-
is that "the
he has, he
form, but
his warrant giving authority to a police-officer to do certain things (*Burn, J.*) NARANAPPAYYA, *In re.*

176 I.C. 256 = 39 Cr L J 719 (1) = 11 R.M. 80 = 1938 M.W N. 319 = 47 L.W. 750 = A I R. 1938 Mad 550 = (1938) 1 M.L J. 609.

——S. 6—*Presumption under—Conditions of raising—Source of information on which warrant of search was issued—Evidence as to—Duty of prosecution to let in—Presumption of regularity of judicial and official acts—Applicability.*

y that before the presumption under
Gaming Act can be available there
ence for the prosecution that the
under S. 5 of the Act upon proper
ent to lead a Magistrate to believe
that the room in question was used as a common gaming house. There is no reason why the presumption under S. 114, Ill (*e*) of the Evidence Act that judicial and official acts have been regularly performed should not be applied. It would be against public policy in most case if the prosecution were compelled to let in evidence in regard to
(*Horwill,*
PEROR.

5 = (1938) 2 M L J. 266.

VILLAGE OFFICES
, 10 (1) and (5) and 21—
Village divided into two—Member of family of last holder passed over—Appointment of stranger—If justified—Suit by member of family of last holder for
t—Jurisdiction of

village, but were
he division, the 1st

to appointments under S. 6 (1); the fact that the 1st respondent's name was registered under S. 10 (5) carried with it no right. The Collector's duty was to select a person from the family of the 1st respondent's father who was qualified to hold the office, if there was such a person, and since the first respondent was a

MAD. HEREDITARY V. O. ACT (1895), S. 6.

v. DASARADHARAMI REDDI.
I.L.R. (1938) Mad. 841 = 175 I.C. 401 = 10 R.M. 769 = 1938 M.W.N. 369 = 47 L.W. 498 = A.I.R. 1938 Mad. 441 = (1938) 1 M.L.J. 552 (F.B.).

——(as amended in 1930), S. 6 (3)—*Scope—If retrospective.*

S. 6 (3) inserted in the Madras Hereditary Village Offices Act by the amending Act of 1930 is not retrospecture in effect. (*Leach, C. J., Varadachariar and Mockett, JJ.*) RANGAREDDI *v.* DASARADHARAMI REDDI. I.L.R. (1938) Mad. 841 = 175 I.C. 401 = 10 R.M. 769 = 1938 M.W.N. 369 = 47 L.W. 498 = A.I.R. 1938 Mad. 441 = (1938) 1 M.L.J. 552 (F.B.)

tion, and expressly excludes the jurisdiction of the civil Court *inter alia* to take into consideration or decide any claim to recover the emoluments of any of the offices specified in S. 3. Unless in a given case jurisdiction is conferred by S. 13 upon the Revenue Courts, it should not be deemed taken away under S. 21 from the civil Court. (*Venkatasubba Rao and Abdur Rahman, JJ.*) VEERANNA *v.* MOCHARAMMA.
1938 M.W.N. 284 = 47 L.W. 421 = A.I.R. 1938 Mad. 535 = (1938) 1 M.L.J. 406

——Ss. 13, 21 and 23—*Jurisdiction—Claim to office of Village Munsif as of hereditary right—Suit in Revenue Court—Second appeal to Revenue Board—Decision in—Finality—Suit in Civil Court to declare illegal and* ultra vires—*Maintainability.*

in a suit that the decision is illegal or *ultra vires* (*Pandrang Row and King, JJ.*) VENKATASUBBAYYA *v.* SECRETARY OF STATE. 178 I.C. 534 = (1938) M.W.N. 477 = A.I.R. 1938 Mad. 483 = (1938) 1 M.L.J. 539.

——Ss. 13 and 21—*Jurisdiction—Village blacksmith—Suit by office-holder for portion of inam land alienated by previous holder — Jurisdiction—Revenue*

MAD. H. C. (O. S.) RULES O. 5, R. 5.

ras Hereditary
necessary for
tain his action
service inam,
...evenue Court
under S. 13 of the Act. Where the plaintiff sues on the ground of a trespass or the ground that the land is his private property or upon the footing that a lease has expired, there is no need for him to rely upon the fact of the land being an emolument of a service inam. In such cases the suits are triable by the civil and not by the Revenue Court. One *M.*, a village blacksmith in a ryotwari village alienated to various persons portions of his service inam lands. He was thereupon dismissed and his widow was appointed to that office. She brought a suit in the Court of the Deputy Collector against the defendant who was in possession of a part of the land as an alienee for possession and got a decree,

in the jurisdiction of the Revenue Court, and hence the writ of *certiorari* should be refused, the plaintiff, though he was actually holding an office, had to allege that he was entitled to hold such office, *i.e.*, that he is the rightful office holder, which was the basis of his right to the emoluments claimed, and therefore the jurisdiction remained with the Revenue Court under S. 13 of the Act. (*Venkatasubba Rao and Abdur Rahman, JJ.*) VEERANNA *v.* MOCHARAMMA.
1938 M.W.N. 284 = 47 L.W. 421 = A.I.R. 1938 Mad. 505 = (1938) 1 M.L.J. 406.

——S. 13—Scope and effect—Collector's power of revision under Regulation VII of 1828—If abrogated. *See* MADRAS SUBORDINATE COLLECTORS AND REVENUE MALVERSATION (AMENDMENT) REGULA-

...2 M.L.J. 488.
—*Second appeal*
hearing appel

RULES, O. 5-A, R. 5—*Suit on behalf of trust for recovery of trust properties—Defendant claiming under sale deed with express covenant for title and indemnity—Application by defendant for making vendor party to suit—Maintainability—Procedure—Power and duty of Court.*

In a suit for recovery of immovable properties alleged to be trust properties belonging to a deity, the plaintiff sought to ignore certain alienations made in violation of the terms of the original endowment. The 1st defendant, one of the alienees, pleaded that he was a *bona fide* purchaser for value and that he was protected by express covenants of title and indemnity in the

sale deeds which he took from his vendors, and as he had the right of indemnity against his vendors he sought to avail himself of the third party procedure under R. 5 of O. 5-A of the Original Side Rules by which he wanted to have his vendors also made parties to the suit so that the question of their liability to him might be determined in case of his own loss in the action of the plaintiff.

Held, (1) that the right of indemnity having been given in terms by the sale deeds, in favour of the defendant, *prima facie* there was a right to indemn against the immediate vendor of the 1st defendant; (though a covenant for title was not the same thing as a

of title, and when such a covenant was expressly given,

would generally exercise its discretion by ordering the trial of that issue subsequent to the trial of the action. (*Venkataramana Rao, J.*) VENKATAKRISHNA NAIDU *v.* NARAYANASWAMI AIYAR. (1938) 2 M.L.J. 886.

——O. 7. R. 7 (2)—*Leave to defend without*

the merits of the case fully and decide. But it must be satisfied that the defence raised shows that there is a fair issue to be tried before a competent tribunal. (*Madhavan Nair, O C J. and Krishnaswami Aiyangar, J.*)

LTD.

MAD

RULES, R. 2-A—Scope—If *ultra vires*—Single Judge of High Court—Jurisdiction to issue writ of *habeas corpus*. *See* GOVERNMENT OF INDIA ACT (1915), S. 108. 1938 M.W.N. 1161.

MADRAS HINDU RELIGIOUS ENDOWMENTS ACT (I OF 1925), S. 9(12)—*"Temple"—Proof of user by public and of dedication—Inference from circum*

but if a temple is shown to possess certain characteristics which are mentioned as those of a "temple" as defined in S. 9 (12) of the Madras Hindu Religious

use of the public or of the user by the public being as of right is necessarily a matter of inference from the

nature of the institution and the nature of the user and the way the institution has been administered. (*Varadachariar and Burn, JJ.*) NARAYANAN NAMBUDRIPAD *v.* BOARD OF COMMISSIONERS FOR THE HINDU RELIGIOUS ENDOWMENTS, MADRAS.

175 I.C. 738 = 11 R M. 1 (2) = 1937 M.W N. 1171 = A.I R. 1938 Mad. 209.

——S. 65-C—*Scope—Notified temple—Powers of*

save—Failure to do so—Revision

Under S. 9 (5), Madras Hindu Religious Endowments Act, there are two grounds upon which a temple may be found to be an excepted temple; the first ccession to the second category the trusteeship and therefore b section must nission to do so will be a good ground for revison under S. 115, C. P. Code (*Burn, J.*) KUMARA ALAGU SAMAYYA NAICKER *v.* MADRAS HINDU RELIGIOUS ENDOW- 174 I C. 841 = 10 R M. 743 = 3) M.W N. 616 = 47 L.W. 647 = A I R. 1938 Mad. 321.

84—*Provisions of succession to founder—If must continue to be in force at time of petition under S.* 84.

The provision for the succession to the trusteeship of an institution which is made by the founder of it is something which is done once for all at or about the time of the foundation. The words in sub-S. (5) of S. 9 do not imply that the provision made by the founder must continue to be in force at the time of the er S. 84 of the Act. (*Burn, J.*) KUMARA MAYYA NAICKER *v.* MADRAS HINDU ENDOWMENTS BOARD.

I C. 341 = 10 R.M 743 = (1938) M.W.N. 616 = 47 L.W. 647 = A.I.R. 1938 Mad 321.

——Ss. 9 (7) and 69—*Applicability—Mutt holding properties granted to it for purposes of worship, light-*

and performance of pujas at the shrines within the mutt and other lands were held by it for the maintenance

and was a mutt of the character contemplated by Madras Act II of 1927, and the Board had the right

J.) VEERAYYA v. BOARD OF COMMISSIONERS FOR H. R. E., MADRAS. (1938) M.W N 744= 48 L.W. 735=A I.R 1938 Mad. 810= (1938) 2 M L J 85

——S. 9 (12)—"*Temple*"—*Public religiou* —*Test to find out religious character of worsh* *worship—Distinction—Performance Nitya*

The test to find out whether the worship in an institution is religious or not is not whether it conforms to any particular school of Agama Sastras; the question must be decided with reference to the view of the class of people who take part in the worship. If they believe in

MENTS, MADRAS v NARASIMHAM 48 L.W 791=1938 M.W N. 1251

——Ss. 18, 57 and 62—*Excepted temple—Framing of scheme—Board proceeding on the assumption that a person was not hereditary trustee—His hereditary trusteeship established in a suit under S 57—Case against the trustee not stated clearly—Procedure causing prejudice to trustee.*

The Commissioners of the Endowments Board proceeded under Ss 18 and 57 of the Hindu Religious

granted a declaration in his favour that he was the hereditary trustee and the suit templ one. In the suit the Court decided framed by the Court was not *ultra* was made out for disturbing it. T revision petition to the High Court, the original petition. On the other

may proceed to consider whether a case for the settlement of a scheme has been made out. The inquiry

and thorough than fad 532 and (1934) ef to. (*Madhavan amy Aiyangar, J.*) INDU RELIGIOUS 48 L.W. 793= 938) 2 M L J. 987.

——Ss. 43 (3) and 73 (3)—*Scope—Dismissal of hereditary Archaka of temple by trustee—Remedy—Suit to set aside dismissal—Jurisdiction of Civil Court.*

machinery of appeal and conferring finality on the decisions in appeal by dismissed office holders are intended to oust the jurisdiction of the Civil Courts to question the propriety of an order of dismissal passed

his father late *C* So long as they pay an annual contribution of rupees three thousand which will be set apart for the *thirupani* work of the temple and for the upkeep and maintenance of the temple walls and its premises" It was also found that the said *S* actually offered to endow a sum of Rs 25,000 for establishing a *thevaram* patasala as an adjunct to the temple, and that this offer which was accepted by the Temple Committee and the Board, was also one of the reasons for the appointment of *S* as trustee for life under certain condi-

the office of trustee for a monetary consideration, being

MAD. HINDU REL. ENDOW. ACT (1927). S. 63.

there were such a custom, it could not be recognised by law.

Quaere—Whether the Board has power to make an appointment of a hereditary trustee in a non-excepted temple? (*Pandrang Row and King, JJ.*) A. L. S. P. P. L. SUBRAMANIAM CHETTIAR *v.* NATESA GURUKKAL. 177 I.C. 823=47 L.W. 529=1938 M.W.N. 393=A.I.R. 1938 Mad. 713=(1938) 1 M.L.J. 517.

——S. 63—*Suit to set aside or modify order settling scheme—Limitation—Six months period—Computation of—Period of duration originally fixed, altered and modified by later orders—Starting point of limitation.*

ed for the original period of two years. The order of 16—3—1932 amounted in substance to framing a new scheme. The trustee instituted a suit on 4—7—1932 to set aside the scheme, which was dismissed on the ground that it was barred by limitation having been brought more than 6 months after the publication of the scheme framed on 31—8—1929.

——S. 73—*Scope of—Suit to establish a right to be a co trustee and for a scheme—Recognition of a system of rotation—Proper procedure.*

On a ...
of trust ...
scheme, ...
in which ...
existing trustees

enforce a system of rotation which by the consent of co trustees has been in existence for many years. But

Religious Endowments Act they are proper, though perhaps not necessary parties to an application before the District Judge under S. 84 (2) of the Act. (*Newsam,*

MAD. IRRIGATION CESS ACT (1865), S. 1.

J.) SANGA...
SASTRI.

A.I.R. ...

MADRAS I...
1904), S. 4—*Scope—Grant of cowle at favourable rent or umbalam land rent free—Validity—Cowle granted long before Estates Land Act—Validity of.*

Section 4 does not prohibit either a cowle at favourable rate of rent or the grant of umbalam lands rent free. Where the evidence showed that a certain cowle was granted long before the passing of the Madras Impartible Estates Act and the Estates Land Act of 1908, ... to the contrary, ...t the grant was ...e said grant was ...der S. 26 (3) of ... cowle was valid ...*n, J.*) SAKKA...IAR.

A.I.R. 1938 Mad. 374.

MADRAS IRRIGATION CESS ACT (VII OF 1865), S. 1 (b)—Penal cess—Levy—Rules as to remedy for improper levy. *See* CROWN—PREROGATIVE TO ASSIGN OR ALTER SOURCES OF IRRIGATION. (1938) M.W.N. 194.

——S. 1 (b)—*Penal water rate, when can be levied*

with the permission of Public Works Department, and has gone on for a period over 40 years and the penal water rate has been levied in respect of such a user

authority and till such authority is withdrawn or ... (*Pandrang Row* ...) ...NASWAMI PILLAI ... 47 L.W. 199= ...938) M.W.N. 97

...*tting water from* ...*xtent of—Anicut diverting water and supply channel remaining unaltered—Dry land brought under wet cultivation—Liabi-*

imposed on the inamdar on the ground merely that he has brought under wet cultivation some dry land in later years. (*Burn and Stodart, JJ.*) SECRETARY OF

MAD. IRRIGATION CESS ACT (1865), S. 1.

STATE v. PONNAMMAL. 48 L.W. 180= 1938 M.W N. 733=A I R. 1938 Mad 838= (1938) 2 M.L.J. 244

——**S. 1, first proviso**—*Scope—Right to exemption from cess—Conditions of—Absence of proof of engagement—Description of land as "wet"—If imports engagement—Minor inam in ryotwari village adjoining Agraharam—Channel passing through Agraharam and supplying water to Agraharamdar under engagement—Inamdar taking water through Agraharam land—If protected.*

the Inam Fair Register as "wet" land does not import an engagement to exempt it from water cess. When the inamdar does not prove an engagement with the Government exempting him from cess, and when there is no reference in the inam papers whatever to any source of water supply the being produced—the descripti does not cast a duty on the the water free, especially in to shew that at the time of fact any source of irrigation at ... down as a broad proposition of law that once Government's liability to supply water is shown—it

point whatsoever. No Court can give countenance to such a proposition which would lead to s Nor can the Inamdar claim immunity b on what may be termed as *jus tertii*. under the Act is not whether the water property of some third party, *e g*, the who is protected by an engagement, and through whose land the inamdar takes, but whether the channel, or

MADRAS LOCAL BOARDS

S. 88—*Ancient —Grant—Pay kattubadi cess—Inference that and not by ruling power—If*

In the case of ancient grants time when the proprietary rights of the ruling power and

A I R. 1938 Mad 219

——**S 88**—*Inam lands not included in assets of zamindari—Inamdar—Liability to zamindar for cess.*

The scheme of the Local Boards Act is that inam lands have not been included in the asset zamindari, the inamdar is himself a landholder directly under the Government But if the assets include

MAD. LOCAL BOARDS ACT (1920), S. 214.

the inam lands as well, he has no direct relation with the Government but the Government collects the cess from the landholder and the landholder reimburses himself from the inamdar treating him as an intermediate landholder. (*Stodart, J.*) RAJA OF VIZIANAGARAM v. ANNAPURNAMMA A.I.R. 1938 Mad. 219.

——**S 93**—*Construction—"In receipt of any income" —Income accrued outside in foreign business and remitted by agent to principal residing within Local Board area—If income received within Local Board*

48 L W. 512=A I R 1938 Mad. 941= (1938) 2 M L J. 589.

——**S. 93 and Sch IV and S 9**—*Scope and effect of—Retrospective assessment—Legality.*

The effect of S. 93 and Sch. IV & S 9 of the Madras

assessee has not been assessed for the first half-year in a particular year, but towards the close of the second half- as having been for rm monthly income ax amount to twice the appropriate half yearly tax is imposed on him, that

Stodart, JJ) AUDIAPPA CHETTI v TALUK BOARD OF DEVAKOTTA. 1938 M W N 931= 48 L W 512=A I R. 1938 Mad 941= L J 589

is—Notice Failure to notice to mply with

f the Local

tal or a conviction in a previous prosecution for disobe- e under S 159 (1) is no bar to the trial of the same accused in respect of a later notice calling upon him to encroachment (*Burn and Stodart,* ROSECUTOR v SABAPATHI CHETTY. 938) Mad 902=1938 M W N 578= 176 I C 395=39 Cr L J 712=11 R M 69= 47 L W 777=A I R 1938 Mad 847= (1938) 2 M L J 456

1938 M W N 410

——**S. 223**—*Applicability—Withdrawal of*
tion—Application for—Right to make—If con
officer sanctioning prosecution — Complaint
tection officer on sanction of President of District

a prosecution is conferred not by the Local Boards Act but by the Criminal Procedure Code. Where a prosecution is sanctioned by the president of a District Board and instituted on the complaint of s
the latter as the complainant has power
permission to withdraw the case. It is
hold that because the prosecution has
authorised by the president of the Distr
the president can withdraw the complaint
Row, J.) PERIASWAMI GOUNDAN, *In re.*
176 I O. 149 = 1938 M.W N. 423 = 11 R M 35 =

A.I

MADRAS
OF 1937),
member of t
for personal
By virtue
share of a ju
property of t
cution of a
S. 38 of the
member who
partition and have his share in the joint estate converted into a separate estate, and a creditor is entitled to attach and sell his share. (*Burn and Venkataramana Rao, JJ.*) SUBRAMANYAM TIRUMURUPU *v* NARAINA TIRUMURUPU. **178 I O. 525 = (1938) M W N. 478 = 47 L.W. 538 = A.I.R. 1938 Mad. 553 = (1938 1 M L J. 710.**

——**S. 43**—*Construction and scope—"At any time"—Attachment of share of member of tarwad in execution of decree—Subsequent application by other members of tarwad for registration as impartible—Order registering tarwad impartible—Effect—If precludes sale of attached share in execution.*

The share of a member of a Malabar tarwad is capable of attachment and sale in execution of a decree

judgment-debtor or any other member of the tarwad which brings about the termination of that interest of the member would operate to the prejudice of the right

creditor. The said expression "at any time" and Cl. 4 of S. 43 must be so construed as not to defeat the right which third parties had acquired before the registration of the tarwad is effected at any rate before the applica-

he subsequent registra-
does not consequently
ing with the execution
share. (*Burn and*
NAN *v.* NARAYANAN
30 = 47 L.W. 786 =
938) 1 M.L J. 715.

——**S. 45**—*Scope—Application to register tarwad as impartible—Suit for partition—Subsequent registration of tarwad as impartible—Effect—Suit—If*

ble pursuant to an application in that behalf made before the suit cannot render the suit incompetent. The

to Sanitary Inspector—If sale—Prosecution of accountant and Secretary of Society—Maintainability.

The supply of sample to a Sanitary Inspector under S. 14 of the Madras Prevention of Adulteration Act is not a sale, and when a sample is so supplied by the accountant of a Co operative Society at one of its branches neither the accountant nor the Secretary of the Society can be said to offer the article for sale so as to render them liable to conviction under S 5 (1) (*d*) read with the rules. (*Lakshmana Rao, J.*) PUBLIC PROSECUTOR *v.* SRINIVASA RAO.
176 I O. 272 (1) = 39 Cr L J. 735 = 11 R M. 50 = 1938 M W N. 317 = 47 L W. 535 = A I R. 1938 Mad. 541 = (1938) 1 M L J. 669.

MADRAS PROHIBITION ACT (X OF 1937), S. 4

accused, a toddy renter, is that he offered a bottle of liquor to his father's customers along with his father, he cannot be said to have possessed the liquor, while his

have no right to enter in the land. The possession of the tenant is displaced by virtue of the statute and it is not therefore by virtue of any confidence reposed by the defaulting tenant in the zamindar that possession is

MAD. REV. BOARD'S STANDING ORDER.

taken, but in opposition to and in derogation of his rights as owner to remain in possession, and therefore the relationship thus created by attachment can in no sense be one of trustee and *cestui que trust* (*Venkataramana Rao, J.*) SESHAGIRI RAO *v.* VENKATA RAMAYYA APPA RAO BAHADUR.

A.I.R 193

MADRAS REVENUE BOARD'S ... ORDER, No. 15—Valuable Crown lan
Revenue Divisional Officer to duffadar—Jurisdiction of Collector to set aside—Civil Court—Right to question order of Collector. See GRANT—CROWN LAND.

1938 M.W.N. 65.

... confirmed he is under an obligation to register the lands in the name of the ... and grant the certi ... that the Collector ... purchase under S. ... raised before the C ... *Rao, J.*) PADMA...

1937 M...

——S 40—*Enquiry under—Scope—Plea of benami purchase—Power of Court* ...

There is nothing in the ... Recovery Act which would ... from contending that the p... certificate of sale is issued ... only a benamidar. The wo... process to be issued" in S... plication under th... appropriate writ, ... laid down by the C... such enquiry as ... contemplated by ... Code, relating ... The Court in ... the Act is therefore ... benami and direct ... respondent that the ... made benami for the respondent with the latter's moneys. (*Venkataramana Rao, J.*) PADMANABHA IYER *v.* VISALAKSHI ACHI.

11 R M. 130=19...
A I

——Ss 40 and 42—*Scope—'Enc... property of Malabar Jenmi—Effect ... Property in possession of tenants under Kanomdar claiming value of improvements—Purchaser's right to* ...

... of the Kanom encumbrance. But the ... Kanomdar who are in possession of the property and ...

... of the Act, but is entitled only to symbolical possession. (*Madhavan Nair and Abdur Rahman, JJ*) AYYA PATTAR *v.* KRISHNAN. 48 L.W. 249=

MAD. SUR & BOUNDARIES ACT (1923), S. 13.

(1938) M.W.N. 837=A.I.R 1938 Mad. 835=(1938, 2 M L J 337.

——S. 58—*Scope—Co sharers of revenue paying estate—Payment of revenue of entire estate by one to avert revenue sale—Suit for contribution against others—Jurisdiction of Civil Court—If barred*

... Act. A co-sharer of a revenue paying estate who pays the whole revenue in order to save, and does so save the estate from liability to be sold by the Government for realising the revenue is, by operation of law entitled ...

... *tax Act—Test.*

... RAJA CHETTIAR *v.* SECRETARY OF STATE.

1937 M W.N 1258.

... of "superin- ... the District ... *It is only* ... at a Revenue ... the powers ... The District ... Regulation ... even after ... *Lakshmana Rao, JJ.*) SRINIVASA AYYANGAR *v.* JAGANNATHA AYYANGAR. 48 L W. 289=1938 M.W N. 840= ... (1938) 2 M L J. 488.

... ACT ... *ficer— ... by un-* ...

An order by the survey officer on a dispute about boundaries is conclusive as to the rights of the parties ...

... claimant is out of possession, then it would not be open ...

... would not be open to him in subsequent proceedings contend that he had on the date of the order acquired title by adverse posse...

survey officer, merely on a consideration of (documentary) of ownership, gives an regarding title, there is no reason why should bar the unsuccessful claimant fro

in subsequent proceedings that at the time of the survey officer's order he had trespassed successfully on the land in question and that his unlawful possession continued and was openly hostile to the real owner for the requisite period, taking into consideration possession anterior to and posterior to the survey officer's order, for establishing title by adverse possession. Similarly, if the survey officer goes into the facts, finds that the unsuccessful claimant is in possession but that his possession is unlawful, and lays down the boundary in accordance with his finding as to title,

bar the unsuccessful p

that his unlawful and

the survey officer to ex

to justify the plea of title by adverse possession in a later suit. The governing factor must be what the survey officer actually decided. The unsuccessful claimant cannot go behind that decision, but there is no reason why he should not in subsequent proceedings put forward any claim which is not inconsistent with that decision. (*Wadsworth, J.*) ACHUTHARAMAYYA *v.* SOORAPPAYYA. 1938 M.W N. 1066 = 48 L.W. 595 = (1938) 2 M.L J. 894.

——S. 14—*Limitation for suit—Starting point—"Notification"—Supplemental notification terminating supplemental survey—If furnishes fresh starting point of limitation.*

The notification from the date of which the three years' period for a suit under S. 14 of the Survey and Boundaries Act commences to run is the notification issued under S. 13 that the survey of the village concerned is complete, in other words, the final notification terminating the survey. A supplemental notification terminating a supplemental survey of -sub divisions consequent on the re settlement miscellaneous inspection cannot extend the time for filing a suit to contest the correctness of the boundaries laid down in the main survey, except in so far as it relates to boundaries changed in the course of the supplemental survey. (*Wadsworth, J.*) ACHUTHARAMAYYA *v.* SOORAPPAYYA. 1938 M W.N. 1066 = 48 L W. 595 = (1938) 2 M L.J. 894.

under S. 6 (1) But where the warrant is issued under Ss. 13 and 14, and merely authorises the Inspector of Police to ascertain whether certain offences under the Act were being committed, the order passed by the Magistrates of the Juvenile Court under S 6 (2) is in-

(1938) 1 M.L J. 886

MADRAS VILLAGE COURTS ACT. (I of 1889), Ss. 15, 21 and 73—*Jurisdiction of Requisites of Civil Procedure Code ca special tribunal has been given jurisdi*

Under S. 15 of the Madras Village 1889) only suits which are filed aga either reside within the local limits of

defendant in his written statement questioned its jurisdiction and moved by a separate application to the District Munsiff under S. 21 of the Act to withdraw the suit from the Village Court, but before the said application was heard the suit was heard *ex parte* and disposed of in favour of the plaintiff and therefore the defendant applied once again to the District Munsiff for setting aside the decree under S. 73, on the questions whether the Village Court had jurisdiction and whether the dismissal of the application to set aside the decision was

of goods in dispute at village *D* as alleged in the case would not confer jurisdiction under S. 15 The position might have been different had the provisions of the Code of Civil Procedure applied. But where a special tribunal, different from the ordinary Courts of the land, has been brought into being by an Act one should look to the specific grounds given in that Act which would confer jurisdiction on that tribunal. (2) That the order dismissing the application of the petitioner under S. 73 was improper and therefore should be set aside. (*Abdur Rahman, J.*) KRISHNA CHETTY *v.* NARAYANAPPA. 47 L W. 259 = 1938 M.W.N. 242 = A I.R. 1938 Mad 497 = (1938) 1 M.L J. 229

MAHOMEDAN LAW.

Apostacy.
Alien law—Applicability.
Applicability
Co heirs—Suit for contribution.
Co sharers.
Dower.
Gift.
Guardianship.
Legitimacy.
Marriage.
Minor
Pre-emption
Sajjadanashin.
Succession.

sy—Renunciation of religious faith—

of a religious faith requires no other person's declaration, the only condition eclaration is not casual, of which the declarer may repent afterwards, but it should be attended with volition and should be such to which the declarer adheres and in which he persists. The motive of the declarer is immaterial. A genuine conversion is one which has actually taken place and if once it is proved as an accomplished fact, further enquiry is barred. Where the plaintiff declared not only in the plaint but even in her statement in Court as her own witness that she did not believe in God, the Qoran and the Prophet of Islam.

Held, that she at once went out of the pale of Islam

MAHOMEDAN LAW.

Din Mohammad, JJ.) MT. RESHAM BIBI *v.* KHUDA BAKHSH. I.L.R. 1938 Lah. 277=40 P.L.R. 722=A.I.R. 1938 Lah. 482.

——*Alien law—Applicability.*

Mahomedans can only be governed by an alien law by reason of custom, and the question in each case is whether the custom has been established. (*Bose, J.*)

1938 A.W.R. (P.C.) 32=1938 A.L.J. 141=173 I.C. 1=47 L.W. 227=A.I.R. 1938 P.C. 80=(1938) 1 M.L.J. 458 (P.C.).

——Co-heirs—Realisation of dower decree from non taluqdari property—Taluqdari property if liable to contribute. *See* CONTRIBUTION—LIABILITY FOR. 1938 A.W.R. (P.C.) 138=A.I.R. 1938 P.C. 169 (P.C.)

purchased by him—Partial partition—Suit for—Right of co-sharers

the case of an immediate vendee would and ought to apply in the case of a vendee fr[illegible] well established that an alienee [illegible] ask for separate possession of [illegible] him if it forms part of the jo[illegible] right is to ask for a decre[illegible] and such joint possession, wou[illegible] along with the other members of the family. If [illegible] their [illegible] ate pos- [illegible] are not [illegible] there is

MAHOMEDAN LAW.

an alienation of a specific joint property; they may well confine their suit to a partition of the particular portion which is in possession of the alienee. There is no reason why the principles which apply in the case of partition decrees in suits for a general partition cannot equally apply to a suit for partial partition. The alienee is entitled as a defendant in the suit of the co-sharers to

[illegible] er and alteration of character of part- [illegible] perty Act, S. 2—Operation of. *See* [illegible] T, S. 2. 1938 P.W.N. 144.

——*Prompt dower—Wife's right to, before*

[illegible] laim prompt dower before consummation (*Mir Ahmad, J.*) MT. PUKHRAJ [illegible] DAYAT ALI SHAH. 178 I.C. 182=A.I.R. 1938 Pesh. 72.

——*Dower—Shia law—Father contracting marriage*

[illegible] means of his own, the father is liable for the dower, cannot be required to conform to a particular feature of the general law nor should it be interpreted in the light

which enlarges the right of the wife or improves her security in respect of dower, an important purpose must

(1938) 1 M.L.J. 458 (P.C.).

him, attornment by the tenants to the donee would be a sufficient delivery of possession. If no such attornment takes place, the delivery of the deed of gift to the donee is not sufficient to validate the gift. (*Bhide, J.*) SHER DAD *v.* MT. ZAFAR JAN. 39 P.L.R.

MAHOMEDAN LAW.

——*Gift—Gift of properties to two brothers—Estate taken—Joint tenancy or tenancy in common.*

A gift of properties to two Mahomedan brothers makes them tenants-in common and not joint tenants in the sense known to English law. That kind of joint tenancy is unknown to the Mahomedan Law and the creation of that kind of interest is not likely to be intended by a Mahomedan donor. (*Varadachariar and King, JJ.*) KASIM ALI *v.* RATNA MANIKKA MUDALIAR. 1938 M W.N. 403= A.I R. 1938 Mad. 677.

——*Gift—*Marz ul-maut*—What constitutes—Death due to heart failure after delivery—Relinquishment of dower debt—Validity.*

It is not a correct view of Mahomedan Law to think

that death will be the result. Where a Mahomedan lady had given birth to a child, relinquished her dower debt and died suddenly four or five days later of heart fa

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174 I C. 465=10 R A. 584=1938 A L.R. 287= 1938 A.W R 1 (H.C.)=1938 A L J. 16= A I R. 1938 All. 145.

——*Gift—Validity—Gift of life-interest.*

is a limited interest in the property and should not be extended to the latter class of cases.

) NAZIRUD-DIN *v.* KHAIRAT ALI. 172 I.C. 384= 1938 O.A. 10=10 R O 174= 1937 O.W.N. 1211=A I R. 1938 Oudh 51.

——*Guardianship—Custody of minor—Loss of right of mother marrying one not within the prohibited degree of relationship to the minor.*

The proposition cannot be disputed that a female including the mother of a Mahomedan child who is otherwise entitled to the custody of the child, loses the right of custody, if she marries a person not related to the child within the prohibited degrees, for example, a stranger. (*Harris and Misra, JJ.*) KUNDAN *v.* AISHA BEGAM. 1938 A L J. 982= 1938 A W R. (H C.) 698.

——*Guardianship—*De facto *guardian—Alienation by—Powers.*

A *de facto* guardian has no power under the Maho-

JAKIRALI. 1938 N L.J. 409

MAHOMEDAN LAW.

——*Guardianship—*De facto *guardian—Mother settling inherited zamindari property with tenant.*

The settlement of agricultural land forming part of the zamindari property inherited by a Mahomedan widow and her minor son, by the mother acting as *defacto* guardian of her son, with a tenant for agricultural purposes does not amount to an alienation or transfer of the minor's interest in the immovable property. It is purely an act of management and not a transfer of the minor's proprietary interests. (*Bennet, A. C. J. and Verma, J.*) TAHAD ALI *v.* ISRAR. 1938 A.W R. (H C.) 788=1938 A.L.J. 1110= 1938 R.D. 910.

——*Guardianship—*De facto *guardian—Powers—Bond by elder brother on behalf of himself and his minor*

each sharer undertook to pay a portion of the debts of the deceased and an elder brother was shown as guardian for his minor brother, who to pay off his as well as

a bond,

e of the

the elder

ala, JJ.)

NAZIRUDDIN ASHRAFF *v.* KHARAGNARAIN. 177 I C. 802=5 B R 17=11 R.P. 186.

——*Guardianship—Marriage of minor—Right to act as guardian for—Rule.*

Residuaries. In default of paternal relations, the right

or aunt and

bited degrees.

v. MUHAM-

4 B R 825= 11 R.P. 153=19 Pat L T 778= 1938 P.W N. 656=A I.R. 1938 Pat. 604.

——*Legitimacy—Acknowledgment—Scope of doctrine.*

Where legitimacy cannot be established by direct proof of a marriage, acknowledgment is recognised by the Mahomedan Law as a means whereby marriage of the parents or legitimate descent may be established as a matter of substantive law. But where illegitimacy is proved beyond doubt by reason of the marriage of the parents being either disproved or found to be unlawful, a child of that marriage cannot be legitimatised by acknowledgment. In particular, a child born of fornication, adultery or incest can never be legitimated by any kind of acknowledgment by the father (*M C. Ghose and R. C. Mitter, JJ.*) MOHAMMAD HANIF *v.* BADARANNESSA. 42 C.W.N. 272.

——*Marriage—Minor girl entering into contract of marriage with father's assent—Validity of marriage—*

was past the age of

d the age of puberty,

h the consent of the

ad not expressed con-

n behalf of the bride

e is not a nullity but

l can avail herself of

a, J.) SM. JOYGUN-

BISWAS.

I.L.R. (1938) 1 Cal. 139=174 I.C. 632=

MAHOMEDAN LAW.

10 R C. 700 = 42 C W.N. 69 = A.I.R. 1938 Cal. 71.

——*Marriage—Minor girl — Option of puberty—Right to exercise—When lost—Delay after becoming aware of right—Effect of.*

When a marriage is contracted for a minor Mahomedan girl by any guardian other than her father or father's father, the minor has the option to repudiate the marriage on attaining puberty.

diation would be lost if, after at

after being informed of the marr

repudiate it, she does not exerci

unreasonable delay The right to r

is, however, a right which may be

girls.

repudi.

e

Mahomedan Law, she at once repudiates the marriage, and brings a suit for dissolution of marriage without any unreasonable delay, it must be held that the right of repudiation is duly exercised and the marriage is dissolved. (*Fazl Ali and Chatterji, JJ.*) AYESHA *v.* MUHAMMAD YUNUS 177 I C 514 = 11 R P 153 = 4 B.R. 825 = 19 Pat.L T 778 = 1938 P W N. 656 = A I R 1938 Pat. 604

——*Marriage—Option of puberty*

Time limit—Effect of exercise of option

The rule of Mahomedan Law respe

of the option of puberty is that a girl ca

tains puberty, repudiate her marriage w

time after she comes to know of the r

right to do so By the exercise of the option of puberty, the marriage ceases to be a marriage and must be

ledge debt.

Under the Mahomedan law a *de facto* guardian has no right to acknowl

him by the ackn

van Nair, J)

1938 M W N. 671 = A I R 1938 Mad 836 = (1938) 2 M L J 251

——*Pre emption—Ceremonies*—Talab-i-ishad—*Invocation of witnesses—If essential.*

In order to establish a right of pre-emption the Mahomedan Law requires that the ceremonies connected with *talab i mowasibat* and *talabi i-ishad* must be per

or otherwise to specifically invoke them to be witnesses and the absence of proper invocation of witnesses is fatal to the right of pre emption 52 A. 1005, not followed (*Derbyshire, C J and D N. Mitter, J*) PACHUMUD DIN *v.* ABDUL GAFFUR 42 C W.N 300

——Sajjadanashin—*Meaning—Duties of—Succession to—Rules governing*

mutawalli has charge of its temporal affairs

cases both the offices may be combined in o

same person. The succession to the office depends on rules if any made by the founder and in their absence by usage (*Sir Shadi Lal, J.*) MAULE SHAH *v* GHANE SHAH 48 L.W 57 =

MAHOMEDAN LAW.

175 I.C. 454 = 42 C.W.N. 1018 = 1938 M.W.N. 751 = 1938 O.L R 319 = 1938 O W N. 688 = 1938 P.W.N 627 = 11 R P C 28 = 19 Pat L.T. 641 = 40 P.L R. 837 = 1938 A L J. 803 = 1938 A.L R. 566 = 4 B R 730 = 40 Bom L R. 1071 = 1938 O.A. 702 = 1938 A.W.R (P.C.) 202 = A.I R 1938 P C. 202 = (1938) 2 M.L J 239 (P C).

——*Succession—Debts of deceased—Alienation for*

—Apportionment of

declaration of their

proportionate share

plaintiffs some of

their shares The

he deceased

rs and paid

suit by the

owners of

ransfers, on

a contention that they could not be given such a declaration unless they contribute their proportionate share of the money advanced to pay off the debts of deceased.

Held, that there was no debt due from the estate as it had been discharged by the defendant heirs who transferred the property and further the defendant transferees are in no way creditors of the estate for they dealt with their transferors as the sole owners of the property and the money was advanced to them per-

1938 A W R. (H C) 40 = 1937 A L J 1320 = A I R 1938 All 182

——*Succession—Debts of deceased—Sale by heirs—Right of creditor to follow property.*

The creditor of a deceased Mahomedan cannot follow his property in the hands of a *bona fide* purchaser for value from his heirs. (*Bhide, J.*) MOHAMMAD AKBAR 39 P L R. 974 (1)

impartible estate—Holder leaving

'e and daughter—Daughter pre deceasing mother—Collaterals, if excluded by mother.

Where a Hanafi Mahomedan dies leaving a will in favour of his wife and daughter in respect of his impartible estate, and the daughter predeceases her mother, and no particular custom is proved and the rule of primogeniture is held not to apply, collaterals who come in as residuaries do not get anything which may be left

sharer has had her share. The

the necessary result is that the

e Mahomedan Law is increased

——Takia—*What is*

v GHANE SHAH. 175 I C 454 = 48 L.W 57 = 42 C.W N 1018 = 1938 M.W N. 751 = 1938 O.L.R 319 = 1938 O W.N. 68°

1938 P.W.N 627 = 11 R P C 28 = 19 Pat L.T

MAHOMEDAN LAW.

40 P.L.R. 837=1938 A L.J. 803=
1938 A.L.R. 566=4 B R. 730=40 Bom.L R. 1071=
1938 O.A. 702=1938 A.W.R. (P C.) 202=
A.I R. 1938 P.C. 202=(1938) 2 M.L J. 239 (P.C.).

——Wakf.

See also MUSSALMAN WAKF ACT (XLII OF 1923) AND MUSSALMAN WAKF VALIDATING ACTS.

Adverse possession.
Creation of.
Dedication.
Genuineness of intention.
Management.
Mosque.
Mutawalli.
Right to sue.
Sajjadanashin.
Sale under Court's order.
Validity.

——*Wakf—Adverse possession of wakf property—Muslims and non-Muslims.*

Per *Young, C J.*—The proposition of law that when a wakf is created all proprietary rights of men are extinguished in the property so dedicated, applies only

liable or not subject to adverse possession.

Per *Din Mohammad, J.*—The British Courts in India cannot ignore the provisions of the Mahomedan Law altogether while dealing with a mosque and the special features which it possesses and the peculiar privileges which it enjoys are always to be determined under the Mahomedan Law and under no other law even though one of the parties to the suit before them may be a non-Muslim. (*Young, C. J., Bhide and Din Mohammad,*

Where a statement in the deed was: 'As long as I am alive I shall remain the mutwalli of the property made a wakf of and shall abide by all the conditions laid down in this deed of wakf'. It was held that this statement amounted to a statement that the possession of the executant ceased as a private owner and his possession began as a mutwalli. (*Bennet and Verma, JJ.*) ALIMUNNISA BIBI *v.* MOHAMMAD ABDUR RAHMAN.

1938 A W R. (H C.) 479=11 R A. 173=
177 I.C. 205=1938 A L R 709=
1938 A L J. 727=A.I R. 1938 All 485.

——*Wakf—Creation of—Necessity—Facts to be proved to show declaration.*

Whether a dedication was made or not is a question of fact, to be proved in the same way as any other fact, and it is for the Court to decide in each the evidence adduced suffices to prove th thing is absolutely certain, and that is that create a wakf, there must be a dedication of perty to the charitable purpose. Where the deceased on

lared
for

MAHOMEDAN LAW.

the site of the proposed mosque and building, or that the expenses of their execution should be met from any particular fund:

Held, that there was no declaration of wakf by the deceased. (*Roberts, C.J. and Dunkley, J.*) RAHIMA BIBI *v.* S. MUSTAFA. 178 I.C. 83=
A.I.R. 1938 Rang. 264.

——*Wakf—Creation of—Provision in will for holy places and for the poor after extinction of legatee's family—If creates wakf.*

A Mahomedan will directed the legatee and his heirs to pay yearly a certain sum to the spiritual preceptor of the testatrix and a certain sum for fatihas, and stated that this arrangement should continue as long as the descendants of the legatee survived and after that the Government should take the estate under its management and after making the above mentioned payments should pay one-third of the profits to Mecca, one-third to Medina and one third to poor Mahomedans of Oudh.

Held, that the payments to the spiritual preceptor and for fatihas at the most might be a charge on the estate but they could not be construed as a wakf, and that the provision for the holy places and for the poor being con-

and Hamilton, JJ.) SRI RAM *v.* MAHOMED ABDUL RAHIM KHAN 172 I C. 882=1938 O L R 44=
1938 O.A. 96=1938 O.W N 67=
10 R O 200=A.I.R. 1938 Oudh 69.

——*Wakf—Creation of—Mutation not made properly—If affects validity of wakf.*

If the deed of wakf was validly created, then the mere fact that subsequently members of the family of ... mutation made in ... em of khewats was ... Act (U P. Act 19 ... is a matter which ... the validity of the ... LIMUNNISA BIBI

...5=11 R A 173=
...938 A L R 709=
...R 1938 All 485.

——*Wakf—Dedication—Definite area of land dedicated for use as graveyard—Presumption as to whole land.*

Once it is found that a certain definite area of land has been dedicated for use as a graveyard, it must be presumed, in the absence of any proof that the dedication was limited, that the whole of the land was set apart to be used solely for the purpose of burying the dead. (*Coldstream and Din Mahommad, JJ.*) IMAM BAKHSH MUNAWAR DIN *v.* NARASINGH PURI.

175 I C. 1005=11 R L 148=
A.I.R. 1938 Lah. 246.

——*Wakf—Dedication—Burial ground — Inference from user.*

The fact that certain plots of land were described in the revenue records as graveyard and had been in exist- ... me as kabaristan by ... itself presumptive ... apart for use as a ... ot by dedication the land is wakf. The nature of wakf will not be altered ... nedan community had taken no ... owner's taking reeds from the ... *m and Din Mahommad JJ.*) ... AWAR DIN *v.* NARASINGH PURI.

175 I.C 1005=11 R.L 148=
A.I.R. 1938 Lah. 246.

MAHOMEDAN LAW

——*Wakf—Dedication—Graveyard—Inference from user.*

number of graves in a large town might not be held to constitute a graveyard. Where from the number of graves on a plot of land it is clear that it must have been used as a graveyard for a considerable number of years and there has never been any attempt by any one to use this land for any purpose than that of a graveyard, the Court is justified in coming to the conclusion that this is a graveyard and one may legitimately infer that there is a presumption of dedication or of a lost grant. (*Zia ul Hasan and Hamilton, JJ.*) QADIR BAKHSH *v.* SADDULLAH. 173 I C. 260=10 R O 211=1938 O L R. 80=1938 O A 116=1938 O.W N. 130=A I.R. 1938 Oudh 77

——*Wakf—Dedication—Proof of intention.*

In determining whether a wakf was created or not the real point for determination is whether the man intended to dedicate his properties then absolutely and for ever. These are the essential requisites of a valid wakf. If the intention to make the wakf can be gathered from the declaration taken as a whole and the surrounding circumstances, the mere fact that the wakif does not subsequently act according to the terms of the wakf will not invalidate the wakf. Where the intention is clear from the surrounding circumstances it is unnecessary to look into the subsequent conduct to find out the intention. If however the intention of the person executing the document is not clear and the declaration and the surrounding circumstances are equivocal, subsequent acts and conduct if they throw any light on the real intention, may be looked into. A document began with a declara

ever as wakf (*Naim Ali and B K Mukerjea, JJ*) JONABALI SARDAR *v.* SABHA KHATUN

MAHOMEDAN LAW.

——*Wakf—Dedication—Will—Construction—Reservation of right of residence to heirs—If offends rule of*

rights of relations,' it was held that on a proper construction of the will in question there was a valid and effective dedication for the purposes specified. It was further held that the provision for the residence of the testator's heirs was not obnoxious to the rule of Shia law which requires a *wakif* to divest himself of all interest in the property and in its usufruct. (*Sir George Rankin.*) ALI BEGAM *v.* BADR UL-ISLAM ALI KHAN. 65 I A. 198=I L R. (1938) Lah. 383=1938 A W R. (P C.) 131=174 I C 870=1938 A L J 825=40 Bom L R 835=42 C W N 845=1938 O L R 278=1938 P.W.N. 470=67 C L J 266=48 L W. 1=10 R.P C 290=4 B R 593=1938 O A 958=1938 A L R. 430=40 P L R 740=1938 M W N. 757=1938 O W N 698=A I R. 1938 P C 184=(1938) 2 M.L J. 1 (P.C.)

——*Wakf—Genuineness of intention—Language—If, a test.*

No distinction in form can be made between a deed of wakf which the executant does not intend should be brought into force and one which he intends to be genuine. (*Bennet and Verma, JJ*) ALIMUNNISA BIBI *v.* MOHAMMAD ABDUR RAHMAN. 177 I C. 205=11 R A. 173=1938 A W R. (H C) 479=1938 A L R. 709=1938 A L J 727=A I R 1938 All 485.

——*Wakf— Management— Wakif surrendering his mutawalliship and right of management—Power to revoke.*

Where a person declares certa— property to be wakf ... permanent mutawalli ... at position by reason ... which he surrenders

... lateral act is not sufficient to divest the jamiat or the registered corporation which subsequently replaces it, of

... person—*Mosque as* ... *institution*

J—A mosque as an ... consisting of stones, ... rson capable of suing ... distinction between a mosque as an institution or as a juristic person which can own property, and a mosque as a building; the mosque as a building may be owned by the institution (juristic person) or by any one else who may acquire adverse possession over it. The mosque as an institution is, therefore, entitled to sue for possession of the building of the mosque or its site for the benefit of all persons interested in the institution (*Young, C J, Bhide Din Mohammad, JJ*) MASJID SHAHID GAN

MAHOMEDAN LAW.

SHIROMANI GURDWARA PARBANDHAK COMMITTEE, AMRITSAR. 175 I C. 945=11 R.L. 91= 40 P.L.R. 319=A I.R. 1938 Lah. 369 (F.B.).

——*Wakf — Mosque—Public character—Proof—*

Something more than the mere appearances of a mosque are needed before it will become entitled to be treated as a mosque for all time. There must be proof of dedication

1938 O A. 722=A.I.R.

——*Wakf*—Mutwalli — *Decree ag*

wakf estate.

It is true that a decree passed against *mutwallis* " as such" will not necessarily bind the wakf estate, but there can be no manner of doubt that in certain circumstances a decree passed in a suit against the *mutwallis* of a wakf estate would affect the wakf property. The question whether the decree affects the property of the wakf will depend upon the facts of the case in which the decree is passed. (*Sen, J.*) FAZAL RAHAMAN v ABDUL RASHID 43 C.W.N. 15

——*Wakf—Mutwalli—Powers—Permanent lease.*

Under the Mahomedan law a mutwalli is not entitled to make a permanent lease of property which is wakf (*Bennet and Verma, JJ.*) ALIMUNNISA BIBI v. MOHAMMAD ABDUR RAHMAN. 177 I C 205= 11 R.A. 173=1938 A.W.R. (H.C) 479= 1938 A.L R. 709=1938 A.L J. 727= A.I.R. 1938 All. 485

——*Wakf — Mutwalli—Right of appointment—Nature of.*

There is in law no absolute right to be appointed mutwalli and it is not a matter of property. (*Ameer Ali, J.*) WAZIR ALI v. LADLEY BEGUM. 177 I.C. 417=11 R C. 244= A I.R. 1938 Cal. 437.

——*Wakf—Right to sue—Protection of wakf estate from waste—Private wakf.*

Persons interested in a private wakf are entitled to brin

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Hence aliena-

tion made by a Sajjadanashin of his share in the offerings cannot bind his successors. (*Sir Shadi Lal.*) ALTAF I

KHAN.

40 P.L R

32 S.I

MAHOMEDAN LAW.

——*Wakf—Sajjadanashin—Right to articles presented for use of tomb.*

The qabarposhes, as well as gold or silver vessels or implements presented for the use of the tomb must be

tomb committee on behalf of the tomb; and Sajjadanashin nor the Khadims are entitled

ate in those offerings. (*Sir Shadi Lal.*)

ISSAIN v. DIWAN SYED ALI RASUL ALI 1938 A.W.R. (P.C.) 37= 1938 O.W N. 253=1938 A.L R. 126= 10 R P.C. 200=40 P.L.R. 253=4 B.R. 312 (2)= 1938 M.W.N. 618=32 S L R. 383= 40 Bom.L.R. 755=172 I C. 985=1938 O L R 92= 47 L W. 221=A I.R. 1938 P.C. 71 (P.C.).

——*Wakf—Sale under Court's order—Protection of purchaser.*

perty protects

er person or

utwalli in the

and to whom

permission to sell was granted, makes not the slightest difference. (*Ameer Ali, J.*) WAZIR ALI v. LADLEY BEGUM. 177 I C. 417=11 R.C. 244= A.I R. 1938 Cal. 437.

——*Wakf—Validity—Settlor's object only to save property from creditors.*

ed property was sufficient to cover the debt and no evidence in support of the *bona fides* of the wakf was given.

Held, that the settlor's object was only to save his

1938 O L R 510=A I R 1938 P C 290 (P.C.).

——*Will—Form of — Expression of intention of testator—Declaration forming basis of draft—Sufficiency of.*

Granted that the will of a Mahommedan need not be drawn in form and granted that it need only be a declaration of the testamentary intentions of the testator, it would be imperative that there should be evidence which

MAHOMEDAN LAW.

1938 M.W.N. 699 = A.I.R. 1938 Mad. 616. (1938) 1 M L J. 444.

——Will of entire property—Probate—Duty of Court *See* SUCCESSION ACT, S. 218. A I.R. 1938 Nag. 173.

——*Will—Life estate—If can be created.*

Under Mahomedan Law a lif when immediately followed by a *ul-Hasan and Hamilton, JJ.)* ABDUL RAHIM KHAN.

1938 O L R 44 = 1938 O A. 10 R.O. 200 =

——*Will—Life estate—Validity.*

The provision of the Mahomedan Law niton repugnat to the grant is invalid only and not to wills. A bequest of a life estate or of

KHAIRAT ALI. 172 I.C 584 = 1937 O.W N. 1211 = 1938 O.A. 10 = 10 R.O. 171 = A.I R 1938 Oudh 51.

——Will—Revocation—Registration of will—Communication by testator to solicitors to draft a codicil as per his instructions—Communications not signed by testator—Codicil not completed — Communications whether operate as codicil and revoke part of his will *See* WILL—REVOCATION (1938) 1 M L J 444.

MAJORITY ACT (IX OF 1875), S. 2—*Scope and operation of—Dower—Mahomedan wife below 18 years age—Ekrarnama foregoing part of dower and charging character of balance from prompt to deferred—Validity of—If to be judged by Act or by Mahomedan law.*

S. 2 of the Majority Act only governs the performance of marriage or effecting of divorce by persons who, though not major according to the Act, are so according to their personal law But the relinquishment by a Mahomedan wife of the whole or part of her dower fixed at the time of the marriage or changing its character from prompt into deferred does not fall within the exception provided by S. 2 of the Act Once a marriage is performed, and the dower settled, the dower becomes a property of the wife like any other property belonging to her. It is a debt payable to her and any transfer or relinquishment of the same, whether in whole or part, is not a matter in any way connected with marriage, and such an act must be governed by the *ordinary law of the land The operation of the section* cannot be extended beyond what is specified therein Consequently an ekrarnama executed by a Mohamedan wife who is a minor under Act, but a major under the Mohamedan law whereby she surrenders a portion of

1938 ...

——S 3—*Scope of—If affected by S 19 of the Guardians and Wards Act—Appointment of guardian for minor having father alive —Legality—Period of limitation—If extended*

In order to extend the minority of a person to 21 years under S 3 of the Indian Majority in the first instance be a lawful appointm dian. An appointment which is not lawfi void cannot extend the period of minority Guardians and Wards Act specifically prohibits the Court from making an appointment of person whose father is alive and who is guardian. An appointment of guarc minor is not a lawful appointment, as i cannot be made under the Guardians and Wards Act.

MALABAR LAW.

The Court has always got the power to vacate or rescind such an order which should never have been made. Nor would such an order extend the period of minority to 21 years under S. 3 of the Majority Act (*Davis, J. C. and* ... THOLANDAS GIDUMAL *v* SADHUMAL 32 S.L.R. 215.

COMPENSATION FOR TENANTS IENTS ACT (I OF 1900), S. 5 (2)—*can override general law of limitation—*

cata.

was not executed the tenant continues in possession. Where a successor of the Jenmi brought a suit more than 12 years after the decree in the prior suit, for ejectment of the tenant, on a plea that it was barred by Art. 139 of the Limitation Act and by *res judicata.*

Held, that the suit was not barred by Art 139 as under S. 5 (2) of Malabar Compensation for Tenants Improvements Act a tenant continuing in possession after determination of tenancy held possession during such continuance as a tenant subject to the terms of the lease.

Held, further, that there could be no bar of *res judicata* in such a case as there neither in fact was, nor in law could be a decree in favour of the Jenmi in the prior suit. (*Venkatasubba Rao and Abdur Rahman, JJ*) GOVINDAN *v* D'SILVA 47 L W 236 = 1938 M W N 241 = A I.R. 1938 Mad 581 = (1938) 1 M L J 313.

MALABAR LAW— *Tarwad — Karnavan—Assignment of lands subject to kanom to junior member in lieu of maintenance with power to redeem kanom—Validity.*

If an assignment by a karnavan had been in favour of a stranger by way of a Melcharth possibly it may be open to objection that a karnavan by assigning away the right to redeem long before the period of redemption, would not be acting prudently in the interests of tarwad and would be unnecessarily fettering the exercise of the discretion of succeeding karnavan who at the time of the expiry of the period should take the circumstances then existing as to the desirability of granting a Melcharth, but if by means of a family

——*Tarwad—Karnavan—Powers of—Debt incurred by karnavan—Liability of tarwad—Assent of senior anandravan—Effect—Presumption of necessity*

The karnavan of a Malabar tarwad is the accredited agent of the tarwad and he represents his tarwad in all

loan by the karnavan, a representation believed in by the ... purpose ... of

adopt it in cases where the contract

MALABAR LAW.

the karnavan in his capacity as karnavan but not for a necessary tarwad purpose. The concurrence of the seniormost anandravan in a transaction of the karnavan raises a *prima facie* presumption of necessity, and it will be for the other members who seek to exempt the tarwad from liability to disprove the case of necessity. (*Venkataramana Rao, J.*) KESAVAN NAMBUDIRI *v.* LAKSHMI VARASYAR. 48 L W. 803=

chit—Binding nature as against tarwad—Test—Onerous terms in mortgage—Power of Court to reduce liability of tarwad.

Kuri chit transactions are well known in Ma and karnavans of Malabar tarwads have been

prudence and an honest exercise of discretion by the karnavan in the light of all the circumstances of the case. Where a karnavan enters into a Kuri chit as representing the tarwad and not in his personal capacity, and the stakeholder admits him *bona fide*, as representative of his tarwad, to membership of the Kuri, a mortgage bond executed by the karnavan in respect of future subscriptions to the Kuri after bidding his chit and getting the bid amount, charging the tarwad properties as security, is binding on the tarwad and its properties, when the transaction appears on the whole to be a prudent one for the karnavan to enter into. It is, however, well within the power of Court, when dealing with such a mortgage, to investigate the necessity for imposing onerous terms on the tarwad and to reduce the terms to what may seem reasonable in the circumstances. (*Varadachariar and King, JJ.*) ANANTHA PATTAR *v.* PADMANABHA PANIKKAR.

1938 M.W N 51=47 L.W. 679=
A.I R. 1938 Mad. 468=(1938) 1 M L J. 79.

——*Tarwad—Karnavan—Powers of—Maintenance allotment to thavazhi—If binds succeeding karnavan—Power to alter.*

It is open to the karnavan of a Malabar tarwad to make grants of land in lieu of maintenance to the junior members of the tarwad and any such maintenance arrangement entered into by the karnavan in favour of

maintenance of the tavazhi including persons to be born

the maintenance of tavazhi, it cannot be assailed the succeeding karnavan on the ground that it may n have been necessary at that time. (*Venkatarama Rao, J.*) MAKKAM AMMA *v.* KUNHI KALAPPA KURUP. A.I R. 1938 Mad. 289.

MALICIOUS PROSECUTION.

——*Tarwad—Property—Thavazhi — Acquisition by karnavan in names of members of his thavazhi—Treatment of such property as thavazhi property—Several succeeding karnavans acquiescing and not claiming same on behalf of tarwad—Inference—Right of new karnavan after lapse of many years to claim property as tarwad property—Acquiescence.*

Where the karnavan of a tarwad who is also the

the tarwad, it is not proper to allow a new karnavan after the lapse of many years to reopen the transactions

conduct is that
he thavazhi and
the tarwad as a
Newsam, JJ.)

AMBU NAIR *v.* UTHA AMMA.

176 I.C. 733=10 R.M. 153=
1937 M. W. N. 1254=A.I.R. 1938 Mad 202.

——*Tarwad—Thavazhi—Legal status of—Acquisition of property as such—Relinquishment of property in favour of thavazhi—Validity—Properties standing in names of members of thavazhi—Compromise decree declaring same as belonging to thavazhi—Effect of.*

A thavazhi consisting of a female and her descendants in the female line, as a sub-division of a tarwad, is a legal entity, capable of holding property as a distinct unit; and properties can be validly relinquished in favour of a thavazhi. Such a relinquishment can be effected by means of a compromise in a suit, to which the members of the particular thavazhi are parties, declaring that the properties standing in the names of certain members of that thavazhi belong to the thavazhi. That amounts to a relinquishment in favour of the thavazhi of the rights, if any, of the individual members. (*Venkatasubba Rao and Newsam, JJ*) AMBU NAIR *v.* UTHA AMMA.

176 I C. 733=10 R M 153=
1937 M.W.N. 1254=A I R 1938 Mad. 202.

MALABAR TENANCY ACT (XIV OF 1930), S. 33—*Applicability—Usufructuary mortgage—Lease back to mortgagor—Latter sub-leasing part to another—Right to apply under S. 33—"Tenant".*

ortgages his property usufructuarily
back of that property from the
bsequently sub leases a part of it to
nant" as defined by the Malabar
therefore entitled to apply under
Although the mortgage and the lease
respects be considered to be one
transaction, yet they undoubtedly operate separately, and

knowledge. The mere fact that the judgment of the Criminal Court ended in favour of the plaintiffs does

not relieve them of the necessity of pro
that the complaint was false to the
defendant or was without reasonable or
In such cases the burden always initia

when the plaintiff in such a case has been acquitted by the Criminal Courts, he should be deemed to be innocent of the charges brought against him by the defendants. But from this it does not follow that defendant's version of the incident was wholly false or th
known it to be false. The defendant
true in every single respect and yet
still have been innocent. (*Bose, J*)
DICHAND *v.* VISHWASRAO PUNDALIK.
A.I R. 1938 Nag. 522.

——*Criminal Court judgment—Reasoning of—If relevant*

In the absence of *res judicata*, the reasons upon which a judgment proceeds are entirely irrelevant in a subse-

A I R 1938 Nag. 522

——*Damages—Measure of—Considerations—Duty to give best proof available.*

Law has not laid down what shall be the measure of damages in an action for malicious prosecution The measure is vague and uncert
variety of facts, conduct of the

——*Defence—Honest belief in guilt of accused—*

IDRIS ABDULLAH
10 R S 205 = A I R. 1938 Sind 11

——*Essentials to be proved—Existence of malice—Question of fact—Want of reasonable and probable cause—If itself evidence of malice*

In order to succeed in a case of malicious prosecution, the person suing has to prove that he was innocent and his innocence was pronounced by a tribunal, that there was a want of reasonable or probable cause for the prosecution and that the proceedings were initiated by a malicious spirit, that is from indirect or improper

malice is purely a ques-
the circumstances of
parties, and the absence
use is not by itself suffi-
elswala, J C.) KANYA-
LLAH.
C. 407 = 10 R S. 205 = A I R 1938 Sind 11.

n aggregate

A Corporation aggregate would be liable in an action for damages for malicious prosecution, if a like action against its agents or servants acting with authority or within the scope of their employment would have been
ed as
HATRA
, LTD.
1219 =
A.I R. 1938 Cal 829.

——*"Prosecution"—Absence of evidence showing that statements made by defendant led to prosecution—Effect.*

Inasmuch as in India prosecution is not private, an action for malicious prosecution will lie against even a private individual, if he is proved to have given information to the authorities which naturally leads to prose-

——*"Prosecution"—Meaning of—When commences—Prosecution by police—Complainant engaging and paying Counsel—Liability of*

Malicious "prosecution" begins when proceedings are

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KODULAL *v.* KALLULAL 20 N L J 261

——*"Prosecution"—When commences—Initiation and*

ABDULLAH. **32 S L.R 1 = 173 I C 407 = 10 R S 205 = A I R 1938 Sind 11.**

——*Reasonable and probable cause—Enquiry into facts—Duty of prosecutor.*

If in any case the facts known to the would be prosecutor reasonably are such as to cause him fairly and honestly to conclude that the accused is guilty of the offence, there is no law which compels him to pro
further enquiries in order to ascertain whether
further information obtainable in support of

secution on which he has decided. Further, where the facts available to the prosecutor at or before he puts the criminal law in motion make out a *prima facie* case against the accused, he is under no duty to ascertain whether there is a defence to the charge. (*Mitter and Biswas, JJ.*) CHATRA SERAMPORE CO-OPERATIVE CREDIT SOCIETY, LTD. *v.* BECHARAM.

42 C.W.N. 1219 = A.I.R. 1938 Cal. 829.

——*Reasonable and probable cause—Proof.*

An honest belief in the guilt of the plaintiff based on reasonable ground is the very essence of the defence to a suit for malicious prosecution. The plaintiff sold certain land to the defendant. The plaintiff expressly refused to guarantee good title with regard to anything which might have happened before the land came into his possession. Before the actual date of transfer he had told the defendant to make his own enquiries, but the

tion was due to the malicious intention of the defendant and for some subsidiary purpose. (*Baguley, J.*) MAUNG OHU KIN *v.* PALANIYAPPA CHETTYAR

176 I.C. 765 = 11 R.R. 80 = A.I.R. 1938 Rang. 121.

——"*Reasonable and probable cause*"—*What amounts to*

MARRIED WOMEN'S PROPERTY ACT (III OF 1874)—*Married woman—Liability on contract.*

Under S. 8 of the Married Women's Property Act, apart altogether from the proviso introduced by S. 2 of Act 21 of 1929, before a creditor can obtain a decree against a married woman on her contracts much more has to be done than mere proof of the contract and breach The question in each case is whether t tract of the married woman was at all covered operative part of the section. (*Ameer Ali, J.*) MATTER OF GEORGE BRIDGE

I.L.R. (1938) 2 Cal. 233 = 42 C.W.N. 577 = A.I.R. 1938 Cal. 486.

contained a statement that the amount due thereon should be paid to the assured at the expiry of the period of 15 years, or to his wife on the death of the assured if

earlier, the policy must be taken to be for the benefit of the wife of the assured, although the *verba ipsissima* "the policy is for the benefit of the wife" are not to be found in the policy. A trust in favour of the wife attaches itself to the policy under S. 6 of the Married Women's Property Act, from the very moment of its birth, although the wife is not entitled to claim anything under the policy unless and until the event referred to in the policy happens. It is not open to a creditor of the assured to treat it as the property of the assured. (*Pandrang Row, J.*) KANNAYALAL *v.* SUBBARAYA CHETTY. I.L.R. (1938) Mad. 867 = 47 L.W. 130 = 1938 M.W.N. 49 = A.I.R. 1938 Mad. 413 = (1938) 1 M.L.J. 281.

——S. 6—*Applicability—Mere statement in proposal that the object of policy was for 'family provision'.*

RATANLAL HIRALAL. 176 I.C. 79 = 11 R.N. 34 = A.I.R. 1938 Nag. 321.

——S. 6—*Construction and scope—Trust in favour of wife—When arises—Naming of trustee and making of amount payable to Official Trustee—If condition*

——S. 6—"*Policy*"—*Meaning of—Proposal and declaration of assured—If part of the policy—Reference to for ascertaining to whom money is to be paid—Permissibility.*

The word "policy" in S. 6 of the Married Women's Property Act means a document or documents evidencing the contract between the parties and constituting the

contains a provision making the proposal and declaration of the assured part of the policy, then such proposal or e deemed and treated as part of . The Court must therefore in proposal or declaration also to insurance money is payable in a proper does not itself contain any words indicating to whom the money shall be paid. (*Leach, C.J., Madhavan Nair and Varadachariar, JJ.*) KRISHNAN CHETTIAR *v.* VELAYEE AMMAL.

I.L.R. (1938) Mad. 909 = 177 I.C. 119 =

MARRIED WOMEN'S PROPERTY ACT (1874), S. 6.

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to "self or wife"—Meaning and effect of—If creates trust in favour of wife of assured.

Where the money under a policy of insurance is made payable to "self or wife," the words "self or wife" can

of the assured dying before the policy matures. And there can be a contingent trust under S. 6 of the Married Women's Property Act. (*Leach, C.J., Madhavan Nair and Varadachariar, JJ*) KRISHNAN CHETTIAR *v.* VELLAYEE AMMAL. I.L.R. (1938) Mad. 909= 177 I C 119=11 R.M 249=1938 M W.N 561= 48 L.W. 25=A I R 1938 Mad 604=

although such settlement was prior to April, 1930 (*Ameer Ali, J.*) GEORGE BRIDGE, *In the matter of.* I L R. (1938) 2 Cal. 233=42 C.W.N. 577= A I R. 1938 Cal. 486.

——S. 8, proviso—*Effect of.*

The proviso added to S. 8 of the Married Property Act by S 2 of Act 21 of 1929 saves t of restraint But the effective provisions of have not been amended (*Ameer Ali, J*) BRIDGE, *In the matter of* I.L R. (1938) 2 Cal 233=42 C.W.N. 577= A I R 1938 Cal. 486

MASTER AND SERVANT—Contract of service in London—Employment in New Zealand on seven hundred pounds "*sterling*"—Payment according to English or New Zealand currency. *See* CONTRACT—CONSTRUCTION 174 I C 47=47 L W 596= 10 R P C 241=A I R 1938 P C 136

——*Dismissal of servant—Ground for—Cumulative effect of acts—If can be taken into account.*

In considering the question whether a summary dismissal is justified the position of the employee and

and Biswas, JJ) CHATRA SERAMPORE CO OPERATIVE CREDIT SOCIETY, LTD *v* BECHARAM 42 C W N 1219=A I R. 1938 Cal. 829.

——*Dismissal of servant—Justification for—Ground not known to master at time of dismissal*

the action of his servant in breach of the conditions of

MASTER AND SERVANT.

the licence under Petroleum Act 1899 S 15 (c) (*Wes-*

I. 138.

punish a servant by suspension. If a servant is suspended, when there is no power of suspension, he can sue for damages for not being allowed to work, if he was ready to work If however there is a power to suspend, the

A I R. 1938 Cal 759.

——*Rights of servant—Wages for period of service—Servant leaving without notice—Master claiming damages—Procedure.*

A monthly servant who leaves service without giving notice is entitled to be paid down to the date when wages were last due but is not entitled to be paid any

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SSER *v.*

JAGANNATH BHAGWANDAS 444= 175 I C. 105=10 R.R. 460 (2)= A.I R. 1938 Rang. 86.

——*Right to wages—Monthly servant leaving service without notice—Right to payment for work done in*

whatsoever, should not able to claim payment for the work that he may have done in the period from the beginning of the month up to the date of his departure being less than a month. (*Mackney, J*) ETBARI *v.* BELLAMY. 176 I C 526=11 R R 54= A I R 1938 Rang 207.

——*Salary of servant—Contract to pay X pounds as salary while currency in gold—Gold currency ceasing to exist—Right to claim salary on gold basis*

Contracts are expressed in terms of the unit of account, but the unit of account is only a denomination connoting the appropriate currency Hence, unit of

currency takes its place (*Lord Wright*) OTTOMAN BANK OF NICOSIA *v* OHANES CHAKARIAN. 172 I C. 780=10 R P C. 141= A I R 1938 P C 26 (P C).

——Vicarious liability. *See* TORTS—VICARIOUS

held that the award of three months salary as dama-

MINOR—Contract by guardian.

——*Contract by guardian—Liability under—Ratification—What amounts to.*

For a valid ratification by a major of a transaction entered into during his minority, there must be after majority and after the late minor has acquired full knowledge of the nature and effect of the transaction, some promise or other act which shows an intentional acknowledgment of his liability for the act done on his behalf during his minority. (*Vivian Bose and Puranik, JJ.*) SADASHEO BALAJI *v* SHANKAR GOVIND.

175 I.C 149=19 R.N 437=A I R. 1938 Nag. 68

——*Contract by guardian—Money borrowed for payment of rent due—Liability of minor.*

Where a guardian of a minor borrows money for the payment of rent due to lambardar which the minor was bound to pay, the minor is liable under the transaction, as the guardian can do what the minor would himself do (*Vivian Bose, J.*) SADASHEO BALAJI *v* HIRALAL RAMGOPAL. **175 I C. 149=10 R N. 437=A.I.R. 1938 Nag. 65.**

——*Debt by guardian—Binding nature—Powers of a guardian.*

A guardian as manager can in a proper case bind, charge, encumber and/or alienate the estate. But if he is not the manager he cannot bind the estate of the minor by any debt contracted. The minor's under S. 68 of the Contract Act is different, i purely a statutory liability arising under certain tions (*Stone, C.J. and Clarke, J*) GARAM TULARAM

——*Debt ing on the Nature and*

Where a passed therec no doubt th subrogated to her right against the estate of the minors It arises from the principle, that the a right of recourse against the estate of hers may be put in her place agai is to say, that he has a right to the nity or lien which the mother estate. (*Venkatasubba Rao and A* NATESA NATTAR *v.* MANIKKA NATTAR.

177 I C. 756=47 L W. 175=1938 M W.N. 103=A.I.R 1938 Mad. 398=(1938) 1 M.L J 181.

——*Decree against—Absence of proper representation—Effect—Suit on mortgage executed by Hindu father—Minor son impleaded and represented by father as guardian ad litem—Suit by minor to declare decree not binding on him—Finding that minor had good defence and that guardian did not properly represent minor and did not raise valid defence—Proper decree—Declaration—Order setting aside whole decree and directing re hearing of suit—Legality.*

Where certain Hindu minor sons sue for a declaration that execu groun neces

minors had a good defence of want of necessity for the

the fathers are concerned, would remain unaffected. (*Wort and Varma, JJ.*) CHITRADHAR NARAIN DAS

MINOR—Guardian ad litem.

v. KIDAR THAKUR. **17 Pat. 236=177 I.C. 886=5 B.R. 37=11 R.P. 191=A.I.R. 1938 Pat. 437.**

——*Decree against—Gross neglect of guardian—Minor represented by father as guardian—Suit to avoid—Competency—Decree in connection with property—Property in minor's possession—Suit for mere declaration of invalidity of decree—If lies—Specific Relief Act, S. 42.*

appointed by the Court, friend, or even the Hindu Law guardian, *i.e.*, his father. But a suit for a mere decla-

property is in the defendant's possession, or for an injunction to prevent the defendant from interfering with his rights in the property. (*Barlee and Macklin, JJ*) SURESHCHANDRA *v.* BAI ISHWARI.

174 I C. 820=10 R B. 493=40 Bom L R 127=A.I.R. 1938 Bom. 206.

which a *de jure* guardian can validly do. A *de facto*

interested in the welfare of the minor, the person who makes an alienation or receives a payment is, at the time of the transaction impeached, regarded by common consent as the person who is entitled to act on behalf of the minor. If there is such a general recognition, then, when once that person has consented to act as guardian, it would not be necessary to wait for a series of acts or transactions in the capacity of guardian in order to clothe that person with authority to represent the estate of the minor. It is unreasonable to withhold from a person who has reasonably been recognised by the family as entitled to represent the minor, the power to do those acts which are necessary for and beneficial to Any payment made to such a person of to the minor would be a valid payment. J) HANUMAYAMMA *v.* LAKSHMI- **1938 M W N 942=48 L W. 506=38 Mad 950=(1938) 2 M.L J. 632.**

proceedings — Judgment debtor in the course of—Procedure. *See* MINOR. **1938 O.W N. 758.**

negligence—Omission

guardian of a minor efence which saves a alienation, is guilty of gross negligence. (*Addison and Din Mohammad, JJ.*) GHULAM AHMAD *v.* NAND LAL. **177 I.C. 101=**

MINOR—Representation.

11 R.L. 265

———*Representation — Minor* ... *dant with other relation—Minor* ... *sented.*

Where a minor was impleaded as a defendant along with his father as well as some other relations whose interest was joint with the minor, it cannot be said that he was properly represented before the Court and that his interests were sufficiently safeguarded by the other membe ...

JJ)

MISC...

See (

(2) ...

(3) LEGAL PRACTITIONERS ACT, SS. 13

14.

MORTGAGE.

148 176 I C 923=A.I R 1938 Rang 65

———*Construction—Mortgage comprising features of usufructuary and simple mortgage—Covenant to pay—Right of sale*

In a mortgage where there are certain provisions

...

Unless there is anything in the decree to show that the normal right of the litigant to recover costs personally against his opponent is taken away, where costs are given against a puisne mortgagee, such costs can be executed personally against the mortgagee, and such right is independent of and exists whether or not O. 34,

MORTGAGE—Interest.

proving sufficient or insufficient. (*Stone, C.J and Digby, J.*) SAHEBCHAND HARAKCHAND *v.* BATTASRAO RAMJI. 175 I.C. 561=10 R N 462= A.I R. 1938 Nag. 237.

———*Equitable mortgage—Deposit of hole of movable machinery—Machinery subsequently becoming immova-*...

... s docu- ... in the ... to the earth become immovable property. It is a well-known principle that the scope of an equitable mortgage does not extend beyond the scope of the title deeds. (*Dalip Singh and Skemp, JJ.*) MADAN LAL *v* GANGA BISHAN. A.I R 1938 Lah 255.

———*Integrity—Breaking of—What amounts to—Suit on prior mortgage impleading subsequent mortgagee—Decree—Sale of part of property—Purchase by members of puisne mortgagee's family—Integrity of subsequent mortgage—If broken by such sale and purchase.*

In a suit to enforce a prior mortgage a decree was passed for sale. The mortgagors and the subsequent mortgagee who were parties to the suit failed to redeem the prior mortgage with the result that part of the mortgaged property was sold in execution in satisfaction of the prior mortgage and purchased by some members of the family of the subsequent mortgagee In a suit by the subsequent mortgagee for sale of the remaining property in enforcement of his mortgage the mortgagors pleaded that the integrity of the mortgage was broken up by reason of the execution purchase and that they were therefore entitled to redeem the property piecemeal.

Held, that the property left for the satisfaction of the ...ond mortgage was the only property on which it ...ld operate and that the integrity of the mortgage had ...n any sense been broken. (*Niamatullah and ...sop JJ*) KABULCHAND *v* BADRI DAS I L R (1938) All 63=173 I C 130= 10 R A 463=1938 A L R 87=1937 A W R 1070= 1937 A L J 1240=A I R 1938 All 22.

———*Interest—Bond containing independent covenant to pay interest at regular intervals—Suit for personal* ... *est—If can be brought*—

...

A.I.R. 1938 Rang 115

———*Interest—Decree awarding interest till realisation—Sale proceeds deposited in Court—Right to interest till confirmation of sale*

The amount deposited by the auction-purchaser on date of sale and on the 15th day after the sale

MINOR—Contract by guardian.

——*Contract by guardian—Liability under—Ratification—What amounts to.*

For a valid ratification by a major of a transaction entered into during his minority, there must be after majority and after the late minor has acquired full knowledge of the nature and effect of the transaction, some promise or other act which shows an intentional

A.I.R. 1938 Nag. 65.

——*Debt by guardian—Binding nature—Powers of a guardian.*

A guardian as manager can in a proper case bind, charge, encumber and/or alienate the estate. But if he is not the manager he cannot bind the estate of the minor by any debt contracted. The minor's liability under S. 68 of the Contract Act is different, it being purely a statutory liability arising under certain conditions (*Sto*

TULARAM

——*Debt*

ing on the estate—Creditor's

Nature and extent of

Where a debt is incurred by

passed thereon are binding upon

no doubt that a creditor of the mother can claim to be

177 I.C. 766=47 L.W. 175=

A.I.R. 1938 Mad. 398=(

and that guardian did not properly represent minor and did not raise valid defence—Proper decree—Declaration—Order setting aside whole decree and directing re-

raise valid defences open to the minors, and that the minors had a good defence of want of necessity for the

MINOR—Guardian ad litem.

v. KIDAR THAKUR. 17 Pat. 236=177 I.C. 886=5 B.R. 37=11 R.P. 191=A.I.R. 1938 Pat. 437.

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property is in the defendant's possession, or for an injunction to prevent the defendant from interfering with his rights in the property. (*Barlee and Macklin, JJ*) SURESHCHANDRA *v.* BAI ISHWARI.

174 I.C. 820=10 R.B. 493=40 Bom.L.R. 127=A.I.R. 1938 Bom. 206.

——*De facto* guardian—Power to acknowledge debt. *See* LIMITATION ACT, S. 21. (1938) 2 M.L.J. 501.

——De facto *guardian—Who is—Test to decide*

debts due to minor.

minor who is validly

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ugh not appointed by

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ion, then,

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minor would be a valid payment.

ANUMAYAMMA *v.* LAKSHMI-

1938 M.W.N. 942=48 L.W. 506=

1938 Mad. 950=(1938) 2 M.L.J. 632.

proceedings — Judgment debtor attaining majority in the course of—Procedure. *See* EXECUTION—MINOR. 1938 O.W.N. 758.

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MINOR—Representation.

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——*Representation — Mi*

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(3) LEGAL PRACTITIONERS ACT, SS. 13 AND 14.

MORTGAGE.

——*Absence of consideration—Effect.*

A mortgage transaction is a nullity if no consideration has passed. (*Din Mahomed, J*) LALA v. JOGE RAM **40 P L R. 784=A I R 1938 Lah 789**

——Co mortgagors — Rights, as against purchaser from one *See* LIMITATION ACT, ARTS. 137, 144 AND 148. **176 I C 923=A.I R 1938 Rang 65.**

——*Construction— Mortgage comprising features of usufructuary and simple mortgage—Covenant to pay—Right of sale*

HAMIDAN **I L R (1938) All 714= 1938 O W N 642=1938 A W R (H.C.) 408= 176 I C 492=1938 A L J 746=11 R A 110= 1938 A L R 634=A I R 1938 All 418 (F B)**

——*Costs—Decree for costs against puisne mortgagee*

executed personally against the mortgagee, and such right is independent of and exists whether or not O. 34,

MORTGAGE—Interest.

proving sufficient or insufficient. (*Stone, C.J. and* SAHEBCHAND HARAKCHAND v. BATTAS- **175 I.C. 561=10 R N. 462= A.I R. 1938 Nag. 237.**

ables such as machinery cannot be construed as documents of the title of immovable property because in the interval the moveable machinery had by fixation to the earth become immovable property. It is a well-known principle that the scope of an equitable mortgage does not extend beyond the scope of the title deeds. (*Dalip Singh and Skemp, JJ.*) MADAN LAL v GANGA BISHAN. **A I R 1938 Lah 255.**

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——*Interest—Bond containing independent covenant* ... *personal* ... *brought—*

lent per- ... or every ... lding for ... a suit ... interest personally from the mortgagor is open to the mortgagee. Failure to pay interest gives fresh cause of action to the mortgagee every time there is a breach and a fresh period of limitation has to be calculated from the date of each breach (*Spargo, J*) MA SHWE TU v. MAUNG BA ... **818=11 R R. 82= ... 1938 Rang. 113.**

... *terest till realisa-* ... *ent—Right to inte-*

The amount deposited by the auction purchaser on the date of sale and on the 15th day after the sale is not

MORTGAGE—Keeping alive.

intended to be paid to the decree holder immediately on deposit but on confirmation of the sale. It is on confirmation of sale that the auction-purchaser's title to the property purchased by him is declared though it relates back to the date of the sale. Till then, his title is subject to the proceedings that may be taken by persons interested in the property for setting the sale aside. Where therefore a mortgage decree directs the payment of interest on the decretal amount till realisation, the decree-holder is entitled to interest confirmation of sale and not up to t sale proceeds are deposited in Court RAMCHANDRA MAHOTRAO *v.* RAMCHANDRA GUJABA. I L.R. (1938) Nag. 456=173 I C 296=10 R.N. 295=A.I R. 1938 Nag. 54.

——*Keeping alive — Intention—P purchasing property mortgaged to him— sequent purchasers from him.*

It should always be presumed that in I ser of previous mortgagee rights intend mortgage alive for his benefit. Though Property Act is not in force in the Punja principles to be applied are those em Amended Act of 1929 which must be hel in accordance with the principles of justi

of rent and in execution of the simple r obtained therein he had the judgment deb sold and himself purchased the equity of the houses. *Z* then sold the two houses to ... a suit against *S* and *N* for recovery of his mortgage-money, by sale of the property mortgaged to him by *S*. *N* claimed priority over *K*'s mortgage in respect of the two houses purchased by him from *K*.

... to the property purchased ... privileges which his vendor possessed. *N* was therefore entitled to subrogate and claim priority over *R* in respect of his own transaction and that *N* by reason of his holding the position of defendant in the suit could claim to retain possession of the mortgaged property until all his claims were satisfied although he might have lost his right by lapse of time. (*Addison and Din Mohammad, JJ.*) NIZAM DIN *v.* RAM SUKH DAS A.I.R 1938 Lah 286

——Keeping of redemption u Right to subroga

——*Invalidity of—Substituted mortgage—Right of*

——Mortgage suit—Claim by mortgagor defendant to abatement of mortgage-money—Set-off or counter-claim

MORTGAGE—Mortgage suit.

in respect of—Permissibility—Proper remedy. *See* C. P. CODE, O. 8, R. 6. 19 Pat L T. 585= 1938 P.W.N. 603.

——*Mortgage suit — Costs—Appeal by mortgagor from preliminary decree—Costs awarded by appellate Court to mortgagee—Personal liability of mortgagor.*

Where an appeal filed by the mortgagor from the preliminary decree for sale passed against him was dismissed by the appellate Court which awarded costs to

where the personal remedy for the balance of the money ordinarily due on the mortgage is barred and the appellate decree for costs is, from its very form and terms, a

is not liable on the but it depends entirely . Where the order was suit be decreed with costs on contest against defendants 3 to 9 (subsequent purchasers) and *ex parte* against others."

Held, that the order was capable of construction in one way only and that it was only an ordinary mortgage against defen- *har Lall, J.*) 11 R P. 170= 1938 P W N. 710.

——*Mortgage suit—Costs—Personal decree for—If can be passed.*

In a mortgage suit, a personal decree for costs cannot be passed. (*Henderson, J.*) SORASHIBALA DASI *v.* AHAD BAX. 42 C.W.N 888=68 C L J. 409.

——*Mortgage suit—Costs—Personal decree for—Power of Court to pass—Construction of decree.*

Although the general rule in a mortgage suit is to add ge security, the Court ke an order for costs It will really be a as to what the Court actually did. The mere absence of words that the

after remand, it would be a perfectly reasonable construction of the decree to hold that as regards the

MORTGAGE—Mortgage suit.

costs of the appeal the decree is a personal decree against the

LALIT MOH

PADHAYA.

——*Mortg*

Transaction between cultivator and rice mill owner—Accounts produced by the defendants only—Decision of lower Court—Value—Interference.

Where in respect of a mortgage transaction between a Burman cultivator and a Chinese rice mill owner, a suit is brought and the defendants plead that the debt is

HLA *v.* MA NGWE SINT. 175 I C. 457=1938 M.W N 768=1938 O.L R. 38=11 R P.C 39=4 B

——*Mortgage suit—Pr*

On the passing of a prel on the basis of a mortgage the relations between the parties are governed not by the terms of the mortgage deed which has ceased to exist, but by the terms of the preliminary decree into which the mortgage becomes merged. (*Misra, J*) TAYYAB HASSAN *v.* SAGHIR HASAN. 1938 A L J 997=1938 A W R (H.C) 728.

——*Mortgage suit—Representation—Suit on mortgage by unauthorised person—Wrong legal representa-*

ing property in execution of his decree—Subsequent

42 C.W.N. 1065=A I.R. 1938 Cal. 634.

MORTGAGE—Release by mortgagee.

——Priority—Agreement to mortgage—Effect of—Subsequent —If relates Ss. 58 AND n L R. 645.

——Receiver—If can be appointed in a suit for sale on simple mortgage. *See* C. P. CODE, O. 40, R. 1—MORTGAGE SUIT 1938 A M L J. 90.

——*Redemption—Clog on—Mortgage for 10 years—Clause providing for payment of mortgage amount on expiry of term—Further clause that payment by mort- n a. particular uity of redemp-*

alia, that the for ten years the other deed llage I shall pay

other deed."

Held, that the stipulation in the deed restricting the

(*Venkatasubba Rao and Newsam, JJ.*) SUPPAN CHETTIAR *v* RANGAN CHETTIAR. (1938) M.W N. 356=A I.R. 1938 Mad. 405.

——*Release by mortgagee in favour of mortgagor—Subsequent sub-mortgage to another—Arrangement between mortgagor and mortgagee that deed of release to take effect on future date—Undertaking by mortgagee to redeem sub mortgage—Subsequent assignment by mortgagee to sub mortgagee—Rights of mortgagor as against*

reupon *S* deed of omise be- 1928, in ease should be but *M* should share until the til delivery of e amount. *S* undertook to redeem sub-mortgage to *B* by end of 1339

not resist the claim of *B* to remain in possession of

ther *S* might recover his property by assigning other securities to *B* or whether *S* or *M* might be able to satisfy *B* by paying the proportionate amount of the mortgage debt. (*James and Chatter*
BIHAR, LTD., CHAPRA v. MAHOMI
175 I.C. 78=10 R.P.
A.I

——*Rights of mortgagee—*
sequent lease by mortgagor—F

A mortgage is not affecte
mortgagor after the mortgag...
rence of the mortgagee, unless the lease be in the usual course of management. So far as dealings by mortgagors with third parties are concerned, mortgagees, in whose favour a mortgage has been created by an inden-
who has
deeds. A
ds and a
and on the
same footing. A mortgage created by th
title deeds does not create only an equitable
to be defeated or postponed, as in England
quent purchaser for value without notice.

to enforce whole charge against the rest.

The mortgagor is obviously bound to pay his debt, and when the interests of third parties do not intervene
of

security by oper
gagee's right to
rest. (*Bose, J.*)

——*Rights of mortgagor—Usufructuary mortgage—Unpaid balance of loan—Suit to recover—Nature of—If maintainable—Measure of compensation*

In the case of possessory mo
has been completed and poss
the mortgagee but the full am
is not paid to the mortgagor,
for the balance of the amount
suit for compensation and the

mortgagor, the mortgagor has got every right to redeem the mortgage and get rid of the liabilities thereunder.

A.I.R. 1938 Pesh. 73.

——*Sub mortgage — Original mortgagee's right to maintain suit.*

——Sub-mortgage—Right of sub-mortgagee to sue original mortgagor—Parties to and frame of suit. *See* T. P. ACT, S. 55 (6). 48 L.W. 766.

——*Subrogation—Equitable doctrine of—Scope of rule.*

The equitable doctrine of subrogation existed in India prior to 1st April 1930. Where a person lends money to a mortgagor for the purpose of paying off a
with the money so
lender is subro-
hose mortgage is
the rights of the

AYE. 1938 Rang L.R. 430=...
11 R.R. 164=A.I.R. 1938 Rang. 306 (F.B.).

——*Subrogation—Equitable right of—Prior mortgagee paying off subsequent mortgagee at the request of*

A.I.R. 1938 Bom. 115.

——*Subrogation—Mortgagee taking another mortgage in lieu of his prior mortgage—Intention to keep*

tuary while the first was simple and that no mention was made in the second mortgage deed of an intention to

MORTGAGE—Subrogation.

subsequently pays off a prior encumbrance is entitled to the benefit of the doctrine of subrogation. Where the owner or an estate pays charges on the estate which he is ... those ... is kept ... tention ... tran ... of the

ding to his interest. While it is well-settled that a purchaser who has undertaken to pay two or more encumbrances cannot, after paying the first of these, get the benefit of subrogation against subsequent encumbrancers whom he has agreed to pay, there is no warrant for holding that because there has been arrangement between the mortgagor and the purchaser of the equity of redemption by which the latter is to pay off an encumbrance it must necessarily follow that the intention was that that encumbrance was not to be kept alive (*Wort and Rowland, JJ*) ABU MOHAMMAD MIAN *v* DEO DUTT 17 Pat 154=1938 P W N 18= 18 Pat L T 994

——*Subrogation—Right to—Person advancing money to pay off mortgage decree and to prevent sale in execution—Omission to take formal deed of mortgage as intended—Effect of*

A person who advances money to the mortgagor to pay off the amount due under a decree on a prior mortgage and to prevent the sale of the property in execution of the mortgage decree is entitled to invoke the doctrine of subrogation The mere fact ... time when the money is advanced no form...

NARASIMHA RAO NAIDU. 176 I C 976= 11 R M. 209=1937 M.W N 1262=47 L W 40= A I R 1938 Mad 161

——*Subrogation—Right of vendee paying off mortgage debt—Payment—If should be in addition to purchase money*

Under the law of subrogation as it stood prior to the enactment of S. 92 of the Transfer Property Act in 1929 a purchaser of the mortgaged property ... mortgage debt out of the purchase mone... claim subrogation There is no warrant ... that payment should be in addition ... money and not out of it (*Venkatasubba ... Rahman, JJ.*) SRINIVASALU NAIDU *v* DAMODARA SWAMI NAIDU 1938 M W.N 708=

——*Substituted ... family property by ... Partition suit by ... mortgaged propert...*

MORTGAGE—Substituted security.

... allotted to mort- ... for mortgagee— ... of non mortgagor

... amily executed a

of the properties allotted to the branch of the mortgagor. In a suit by the mortgagee (appellant) on the mortgage he was given a decree for substituted security The appellant proceeded to execute his decree against the properties allotted to the branch of his mortgagor. The plaintiff in the partition suit claimed payment of certain amounts out of the sale proceeds under the direction contained in the final decree in the partition suit ... ght to execute his ... lared in favour of ... receive a cash sum ... sold, (2) that the plaintiff in the partition suit was entitled to a charge on the properties sold for the amount awarded by way of owelty and had such a prior charge as against the appellant, (3) that the appellant by his decree against a substituted security did not get a right against the whole of the properties allotted to his mortgagor regardless of any incident of the partition in derogation of that share, but only a right to proceed against the net share of his mortgagor after making allowance for deductions to be met under the partition decree, that is, that the substituted security to which the mortgagee was entitled should not be more than the actual share of the mortgagor (*Wadsworth, J*) RATHNAVELU CHETTIAR *v* SUBRAMANIAM CHETTY 48 L W 215=(1938) M W N 1096= A I R 1938 Mad 767.

——*Substituted security—Mortgage of undivided share—Subsequent partition—Right of mortgagee to proceed against property allotted at partition*

Where a mortgagor mortgages part of his property from his undivided share and after a partition he is ... um before. (*Wort and Varma, JJ*) BALAKRISHNA PRASAD *v* APURBO KRISHNA 175 I C 194=4 B R 547=10 R P. 593= A I R 1938 Pat 199

——*Substituted security—Right of charge holder to follow*

R obtained a money decree against *B* and attached in execution a decree for costs obtained by *B* against a certain deity The attached decree was executed by *R* ... sit in Court. ... by *R*, *B* ... r of *X* *X* ... the execu- ... onfirmation. To this suit *R* was not made a party In execution of the decree obtained on the basis of charge, *X* applied ... in Court to ... der directing ... nor to *R* ... ad, ... r on r ...

MUSSALMAN WAKF (1923), S. 10.

designated to receive the particulars referred to in the Act is to enter into an elaborate inquiry as to existence of the wakf or to determine the right mutwalliship between rival claimants. By leaving right to mutwallship undecided, the object of the Ac not frustrated because Ss 5 and 10 act as preventive against applications under S 3 being made by persons who are not actually mutwallis. (*Agarwala, J.*) NANHE SHAH *v.* ABDUL HASAN.

174 I C 152=4 B R. 391=10 R P. 481=19 Pat L T. 617=A I R. 1938 Pat 137

——(as amended by Bombay Act XVIII of 1935), Ss. 10 and 10 B—*Jurisdiction to try offences under—If confined to District Court.*

After the Bombay Amending Act Bombay Presidency and presumably it is not now the scheme of the Act th the Act should be punished only by 1 as the only Court conter Amending Act has now the offence under S. 10 a generally to offences co whole. The scheme of tl the Act are ordinary criminal proceedings to be tried by the ordinary Criminal Courts with the provisos that sanction for prosecutions must be given by a Court in the manner prescribed and that no Criminal Court of the Second or Third Class Magistrate shall be competent to try an offence under that Act (*Davis, J.C. and Lobo, J.*) PIR SHAHDINO SHAH *v* EMPEROR.

176 I.C. 767=11 R S. 36=39 Cr L J 805=A.I R. 1938 Sind 149

MUSSALMAN WAKF VALIDATING ACTS OF 1913 AND 1930—*Mortgage created before* 1930—*If affected by these Acts*

The Mussalman Wakf Validating Act of 1913 had no retrospective effect and it was only by the later Act of 1930 that it was made to apply to wakfs created before 1913 and then only if any right, title, obligation or ... A mortgage affected by ... *JJ*) SRI ...

172 I O. 882=1938 O L R 44=1938 O A. 96=1938 O.W.N. 67=10 R.O 200=A.I.R. 1938 Oudh 69.

——S. 3—*Interpretation—Wakf excluding principal heir—Validity.*

A wakf which is against the Mahomedan Law of Inheritance and which excludes the principal heir is not invalid under S. 3 of the Mussalman Wakf Validating ...

... descendants The expression "family, children and descendants" does not mean the family or children or descendants as a class but may mean ... of a particular class Under Mahomed ... wakf can be created in favour only of ... the family or some of the childrer ... whether males or females ... (*Addison and Abdul Rashi*... TAJ BEGUM.

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MUTATION—*Decision* ... *Possessi* ... *of—Subsequent declaratory*

MYSORE AGRI. REL. REG., S. 11.

decree of Civil Court in favour of another—Effect—If ...

decree cannot on the strength of such a decree apply either for mutation or correction The person in possession could only be put out of possession by a decree of *dakhl* given by a Revenue Court. (*Darling, S.M. and Bomford, J.M.*) NARAIN SINGH *v.* MST. KUNJI KUNWAR. 1938 R D. 245=1938 A.L J. (Supp.) 33=1938 A.W R. 61 (BR).

——*Evidence—Realisations of rent after date of application—Value.*

... mortgagee agreeing to thekadar being recorded as such on his undertaking to surrender possession after Civil Court's decree—Mortgagee applying for mutation after decree by Civil Court—Application opposed by thekadar—Mortgagee's remedy. *See* AGRA TENANCY ACT S. 237. 1937 R D 391.

MYSORE REGULATIONS AND ACTS

... EF REGU- ... pl. 1 (b)— ... agriculturist ... place is on ... *and Singaravelu Mudaliar, J.*) GANGE GOWDA *v.* POONAMCHAND 15 Mys L J 547=42 Mys H.C.R 597.

... preliminary decree—Necessity for. ... CODE, O. 34 R. 5 43 Mys H O.R. 483.

MORTGAGE—Subrogation.

keep alive the first mortgage, do not show that he did not intend to keep alive the earlier mortgage. (*Zia-ul-Hasan and Hamilton, JJ.*) PITAMBAR DAS v. DURGA BAKHSH SINGH. 178 I C. 271=10 R O. 214=1938 O L.R. 94=1938 O.A. 138=1938 O W.N 155=A I.R. 1938 Oudh 90.

——*Subrogation—Purchaser of equity of redemption paying off prior encumbrance—Right of—Keeping alive—Intention—Presumption—Agreement between mortgagor and purchaser that latter should pay off encumbrance—If negatives intention to keep same alive.*

A person who purchases the equity of redemption and

the ordinary rule is that a man having a right to act in either of two ways shall be assumed to have acted according to his interest. While it is well settled that a purchaser who has undertaken to pay two or more encumbrances cannot, after paying the first of these, get the benefit of subrogation against subsequent encumbrancers whom he has agreed to pay, there is no warrant for holding that because there has been arrangement between the mortgagor and the purchaser of the equity of redemption by which the latter is to pay off an encumbrance it must necessarily follow that the intention was that that encumbrance was not to be kept alive (*Wort and Rowland, JJ*) ABU MO

DUTT. 17 Pat .

——*Subrogation—Right to -*

to pay off mortgage decree and to prevent sale in execution—Omission to take formal deed of mortgage as intended—Effect of.

A person who advances money to the mortgagor to pay off the amount due under a decree on a prior mortgage and to prevent the sale of the property in execution of the mortgage decree is entitled to invoke the doctrine of subrogation The mere fact that at the time when the money is advanced no formal deed of mortgage is executed or that the parties intend to secure repayment by a formal deed of mortgage will not affect the applicability of the rule of subrogation. (*Leach, C J and Varadachariar, J*) OONAMALAI AMMAL v NARASIMHA RAO NAIDU 176 I C 976=11 R M. 209=1937 M W N 1262=47 L W 40=A I R 1938 Mad 161

——*Subrogation—Right of vendee paying off mortgage debt—Payment—If should be in addition to*

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Rahman, JJ) SR

SWAMI NAIDU

——*Substituted*

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Partition suit by

mortgaged properti

MORTGAGE—Substituted security.

tiff to payment of amount out of share allotted to mortgagor—Decree for substituted security for mortgagee—Execution—Rights of mortgagee and of non mortgagor co parcener.

One of two brothers of a Hindu family executed a mortgage of two items of property to the appellant. In a partition suit by the son of the other brother who had deceased, to which the appellant was not a party, the final decree allotted to the plaintiff the mortgaged items of property and gave the plaintiff a right to a payment of a certain amount, by way of owelty to equalise the shares, and the money was made payable from the share

the plaintiff in the partition suit to receive a cash sum out of the proceeds of the properties sold, (2) that the plaintiff in the partition suit was entitled to a charge on the properties sold for the amount awarded by way of owelty and had such a prior charge as against the appellant; (3) that the appellant by his decree against a substituted security did not get a right against the whole of the properties allotted to his mortgagor regardless of any incident of the partition in derogation of that share, but only a right to proceed against the net share of his mortgagor after making allowance for deductions to be met under the partition decree,

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M W.N 1096=A I R 1938 Mad 767.

——*Substituted security—Mortgage of undivided share—Subsequent partition—Right of mortgagee to proceed against property allotted at partition*

Where a mortgagor mortgages part of his property from his undivided share, and after a partition he is given other property than that which was mortgaged, the mortgagee can follow that proportion of the property allotted to the mortgagor that would bear the same ratio to the property mortgaged and unmortgaged held by him before (*Wort and Varma, JJ*) BALAKRISHNA PRASAD v APURBO KRISHNA 175 I C. 194=4 B R 547=10 R P. 593=A I R 1938 Pat 199.

——*Substituted security—Right of charge holder to follow*

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t he pledge in the new form applied only to cases where the conversion of the security became binding on the

in execution—Rival purchasers—Priority—Right to

other as a party to his suit, priority of the date of purchase of the mortgagor's right to possession gives priority of title to possession until the rights of the parties are worked o persons interested are chasers the earlier pu special circumstances obtained possession, there is no reason why because the subsequen sion first. (*Shankaranarayana Rao and Abdul Ghani, JJ.*) SINGALACHAR *v.* THIMME GOWD 16

——*Usufructuary mortgage—Advan and provision for repayment in instaln of years—Mortgagee put in possessi annual profits towards debt—Form of m*

Where the essence of transaction is security, there being an advance to the mortgagor-debtor and provision for repayment to the cre instalments for a term of years, and t

fructuary mortgage. The fact that a p immaterial. (*Wort and Varma, JJ.*) GHOSH *v* BAIJNATH PANDEY. 176 I C. 892= 4 B R. 784=11 R.P. 121=A.I.R. 1938 Pat. 388.

——*Usufructuary mortgagee's interest—Nature of.*

The interest of a usufructuary mortgagee in the mortgage, is comprising as out of land. FATEH SINGH *v.* RAGHUBIR SAHAI

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place as defined in S. 2, Motor Vehicles Act. To make it a public place under the Motor Vehicles Act, it must be a road, street, way or a place over which the public

granted d of the wall ran along the third side. The fourth side, however, was open and looked towards a public street. The land was

under the Motor Vehicles Act a person cannot be arrested. The power of arrest given under S. 57, Cr. P. e of no avail unless and until such give his correct name and address. *Sharpe, JJ.*) THE KING *v.* MAUNG 175 I.C. 639=39 Cr L J. 645= 11 R R. 9=A.I.R. 1938 Rang. 161.

——S. 5—*Offence under, and offence under S. 279, I.*

two sections seems to be this. A man may drive a motor vehicle in a manner dangerous to the public,

he may not endanger any person at all because there to be nanner mount there. Code, ely to , there gered. nanner some passer-by only saves his life by a wild leap to safety, then the driver of the vehicle is driving in a manner so rash and negligent as at least to be likely to cause hurt to that person who only saved his life by his ability and an offence under S. 279, Penal Code has *Sharpe, JJ.*) THE J 642=11 R R. 9= A I R 1938 Rang 161.

MUHAMMAD RAFIQ *v.* EMPEROR. 173 I.C. 860=4 B R. 351=10 R.P. 451= 39 Cr.L.J. 382=A.I.R. 1938 Pat. 268.

——**Ss. 11 and 16**—*Bombay Motor Vehicles Rules, R. 21—If* ultra vires—*Notification under by District Magistrate—Breach of—Offence.*

Rule 21 of the Bombay Motor Vehicles Rules framed by the Local Government under S. 11 of the Motor Vehicles Act is not *ultra vires* of the Local Government. A notification issued by a District Magistrate under R. 21, prohibiting the driving on certain roads of the District of *inter alia* any motor vehicle, public or

——S. 11, Rules under. R 58-B (Rangoon)—*If* ultra vires.

Per Baguley, J.—The power to seize a license given under rules framed by Local Government from its owner and keep it for a certain time cannot in any way help to carry into effect the provisions of the Act. It is not even a temporary suspension of the license because

175 I C. 639=39 Cr L J 642=11 R R 9= A I R 1938 Rang 161.

——**S. 16 and R. 30 (a)**—*Absence of 'G' permit—Private lorry—Conveying of goods for hire on a single occasion—If an offence.*

Though R 30 (a) may be primarily intended to apply

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——**S 16**—*Madras Motor Vehi*
Charge against owner of lorry of
of proof

In a prosecution of the owner c
S. 16 of the Motor Vehicles Act for overloading the
lorry in contravention of R. 15 A, of th
Rules, the burden is on the prosecution
accused knew that the lorry was overloa
lorry in question with the load is shown to be proceeding from a place far away from the place where the owner of the lorry has his business, it cannot be held that the accused knew of the overloading (*Horwill, J.*) DEVARAJA MUDALIAR *v* EMPEROR

48 L W 319=1938 M W N 867=
178 I C
A.I R 1938 Mad

——**Ss. 16 and 4 (c)**—*N*

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173 I C. 860=4 B R. 351=10 R P 451=39 Cr L J. 382=A.I R. 1938 Pat. 268.

——**S. 16**—*Offence—Madras Motor Vehicles Rules, R.* 30 (*a*) (1) (*i*)—*"Let for hire"—Meaning of—Lorry engaged for journey from place in one district to place in another district—If let for hire along roads in both districts—Absence of special G permit—Offence—If committed in both districts.*

"Letting for hire" in R. 30 (*a*) (1) (*i*) of the Madras Motor Vehicles Rules framed under the Motor Vehicles Act of 1914, need not be one definite and localised act.
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mits an offence under S. 16 of the Motor Vehicles Act not only in the District of Malabar but also in the district of Coimbatore if the lorry gets beyond the limits of the district of Malabar on its journey to Pollachi. The framers of the rules must reasonably be held to have intended that permits should be taken out for every

30 (*a*) (1) (*i*)—*Violation of—Prosecution for—Failure to prove absence of G permit—Effect.*

In a prosecution under S. 16 of the Motor Vehicles Act for violation of r. 30 (*a*)(1)(*i*) of the Madras Motor Vehicles Rules, it is incumbent on the prosecution to prove by evidence that the vehicle in question was not
to let in evidence of
(*Burn J*) PUBLIC
177 I C. 314=
861=11 R M 303=
822=47 L W 774=
(1938) 1 M L J 800.
hicles Rules, R. 23—
ty to conviction for

under R 23 of the Punjab Motor Vehicles Rules read with S 16, Motor Vehicles Act, on the ground that his lorry was carrying a load in excess of its carrying capacity (*Ram Lall, J*) GURANDITTA *v* EMPEROR.

177 I.C. 975=39 Cr L J 970=
40 P L R 912=A I R 1938 Lah 601

39 Bom L R 1269.

ACT (XLII OF 1923) Ss. 3, 5 and 10—*Enquiry—Scope of—Right to mutwalliship between rival claimants—If to be determined.*

There is nothing in the Mussalman Wakf Act either in its preamble or in its provisions to indicate that was the intention of the Legislature that the C

MUSSALMAN WAKF (1923), S. 10.

designated to receive the particulars referred to in the Act is to enter into an elaborate inquiry as to the existence of the wakf or to determine the right to mutwallиship between rival claimants. By leaving the right to mutwallиship undecided, the object of the Act is not frustrated because Ss. 5 and 10 act as preventive against applications under S. 3 being made by persons who are not actually mutwallis. (*Agarwala, J.*) NANHE SHAH *v.* ABDUL HASAN.

174 I C 152=4 B R. 391=10 R P. 481=19 Pat L T. 617=A.I R. 1938 Pat. 137

——(as amended by Bombay Act XVIII of 1935). *offences under*—

as the only Court contemplated by Amending Act has now created othe the offence under S. 10 and added S. 10 B which applies generally to offences committed under the Act as a whole. The scheme of the Act is that offences under the Act are ordinary criminal proceedings to be tried by the ordinary Criminal Courts with the provisos that sanction for prosecutions must be given by a Court in the manner prescribed and that no Criminal Court of the Second or Third Class Magistrate shall be competent to try an offence under that Act (*Davis, J C. and Lobo, J.*) PIR SHAHDINO SHAH *v.* EMPEROR.

176 I C. 767=11 R S 36=39 Cr L J. 805=A.I R. 1938 Sind 149

MUSSALMAN WAKF VALIDATING ACTS OF 1913 AND 1930—*Mortgage created before 1930—If affected by these Acts.*

The Mussalman Wakf Validating Act of 1913 had no retrospective effect and it was only by the later Act of 1930 that it was made to apply to wakfs created before 1913 and then only if any right, title, obligation or liability already existing was not affected. A mortgage created before 1930 cannot, therefore, be affected by these Acts. (*Zia ul-Hasan and Hamilton, JJ*) SRI RAM *v.* MAHOMED ABDUL RAHIM KHAN

172 I C. 882=1938 O L R 44=1938 O A. 96=1938 O.W.N 67=10 R O 200=A.I R. 1938 Oudh 69.

——S. 3—*Interpretation—Wakf excluding principal heir—Validity.*

MUTATION—*Decision in mutation proceedings—Possession in pursuance of—Subsequent declaratory*

MYSORE AGRI. REL. REG., S. 11.

decree of Civil Court in favour of another—Effect—If can justify order of correction.

Where a person is in possession after the decision of a mutation case in his favour, the opposite party who went to a Civil Court and obtained only a declaratory decree cannot on the strength of such a decree apply either for mutation or correction The person in possession could only be put out of possession by a decree of *dakhl* given by a Revenue Court. (*Darling, S M. and Bomford, J.M.*) NARAIN SINGH *v.* MST. KUNJI KUNWAR. 1938 R D. 245=1938 A.L.J. (Supp.) 33=1938 A W R. 61 (B R.).

——*Evidence—Realisations of rent after date of application—Value.*

1938 A.W.R. (B R.) 375.

——Theka granted by mortgagor pending foreclosure proceedings—Mortgagee agreeing to thekadar being recorded as such on his undertaking to surrender possession after Civil Court's decree—Mortgagee applying for mutation after decree by Civil Court—Application opposed by thekadar—Mortgagee's remedy. *See* AGRA TENANCY ACT S. 237. 1937 R D. 391.

MYSORE REGULATIONS AND ACTS.

- Agriculturists' Relief Regulation.
- Arbitration Regulation
- City Municipalities Act
- Civil Procedure Code Regulation.
- Companies Regulation.
- Co operative Societies Regulation.
- Court-fees regulation.
- Criminal Procedure Code Regulation.
- Excise Regulation
- Hindu Women's Rights Regulation
- Insolvency Regulation.
- Land Acquisition Regulation.
- Land Revenue Code Regulation.
- Limitation Regulation
- Negotiable Instruments Regulation.
- Police Regulation
- Railways Act
- Registration Regulation.
- Regulation VII OF 1923.
- Town Municipalities Regulation.
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... RELIEF REGU- ... 2, Expl. 1 (b)—

... was an agriculturist ... ion took place is on

See MYSORE C. P. CODE, O. 34, R 5 43 Mys.H C.R. 483.

MYSORE ARBITRATION REGULATION (I OF 1917), S. 12 and Sch I, para. 3—*Scope—Discretion of Court—Enlargement of time beyond period fixed after making of award—Powers of Court—Conduct of parties—Effect.*

The Court has ample power under S. 12 of the Arbitration Regulation to extend time even after an award has been made by the arbitrators, beyond the period provided for by the deed of submission or by para. 3 of Sch. I of the Regulation. Arbitration is a special method prescribed by the Legislature for the settlement of disputes in a speedy and inexpensive

arbitrators, including the award made by them out of time. Where all the parties have by their conduct agreed

MYSORE CITY MUNICIPALITIES ACT (1933), S 41 (7)—*Applicability — Contract of bailment—Essentials of Validity—Bicycle stand put up by Municipality outside market—Municipal peon at stand giving tokens to person parking cycle at stand and taking same back when bicycle is taken away—Relationship of bailment—If created—Liability of Municipality for loss of parked bicycle.*

In the absence of a proper contract of bailment confirming to the provisions of S. 41 (7) of the City Municipalities Act, the Municipal Council cannot be made liable as a ba lee A bailment necessarily involves

outside a Municipal Court It was usual for cyclists going into the market on business to leave their bicycles in that stand ; and when a bicycle was so left there a peon of the Municipality handed to the

to the market and left his bicycle at the stand and was given by the peon two discs When plaintiff after his work inside the market handed back the discs to the peon, he did not find his bicycle in the stand and was told that it had been taken away by some one else Plaintiff sued the Municipality for return of his bicycle or the value thereof on the ground of an implied contract of bailment

Held, (1) that was no bailment or entrustment of the bicycle by the plaintiff to the Municipal peon so as to render the Municipality liable to the plaintiff to return the bicycle to the plaintiff , (2) that the plaintiff at best was a mere licensee who kept his bicycle at the stand at his own risk and was therefore not entitled to sue the Municipality on any contractual basis. (*Sankaranarayana Rao, J.*) BANGALORE CITY

MYSORE C. P. C. REG. (1911), O. 7, R. 11.

MUNICIPALITY *v.* VISWANATHA RAO.
16 Mys L J, 368.

MYSORE CIVIL PROCRDURE CODE REGULATION (III OF 1911), S. 48—*Applicability—Application for arrest and for attachment of moveables filed within 12 years—Application after 12 years for amendment of former by permitting attachment and sale of immoveable properties not mentioned before—If can be allowed—Bar of limitation—O. 21, R 17 (2)—Powers of amendment*

decree holder applies for execution by arrest ... ient debtor and attachment of his moveable

an application for addition of other properties made after 12 years after the decree a continuation of the

GOWDA *v.* SHIVALINGAPPAIYA.
16 Mys L J 461 = 43 Mys H C R. 476.

——**S 104**—*Pending suit—Arbitration—Award—Order refusing to file—Appeal—Revision*

No appeal lies under S 104, C P Code, from an order refusing to file an award made on a reference to arbitration in a pending suit, and consequently an application in revision against such order is competent. (*Singaravelu Mudaliar, J.*) KRISHNAMURTHY NAIDU *v.* PEDDANAGAMMA. 16 Mys L J. 158.

——**S. 115**—*Applicability—Order under S. 476-B on appeal from order by Civil Court—Revision—If to be*

S 115, C P Code and not S 439 (1), Cr. P. Code, applies to a case where a Civil Court passes an order under S 476 B, Cr P Code, making or refusing to make a complaint, on appeal from an order under S. 476 (1), Cr P Code. The mere fact that a ...

(1), Cr. P Code The words "any proceeding" in S 439 (1), Cr P Code, must be taken to mean any proceeding of an inferior Criminal Court. Ss 435 and 439, Cr P Code must be read together. (*Sankaranarayana Rao and Sreenivasa Rao, JJ.*) RAMASWAMY *v.* RAMASWAMY IYER.
16 Mys L J 540 = 43 Mys H C R 550.

——**O. 7, R 11**—*Scope—Powers of Court—... for payment of deficient court fee—Suit ... Court before expiry of time fixed for ... Procedure—Dismissal of suit—Decree against ... for payment of deficit court fee—Jurisdiction ... Court Fees Regulation, Ss. 7 (x) and 9*

The only course open to a Court in a ... plaintiff fails to pay the deficit court-fee ...

Court is to reject the plaint as directed in O. 7, R. 11, C. P. Code, and not to pass a decree against the plaintiff for the amount of the deficit court fee. Ss. 7 (11) and 9 of the Court-Fees Regulation also prescribe the same procedure, namely, to stay the suit until the additional fee is paid and in case of non payment within the time fixed to dismiss the suit. The
under both the C. P. Code and
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a suit for partition of immovable property by metes and bounds and for delivery of the plaintiff's share, the plaintiff was ordered to pay an additional court-fee within a period of two months In the meanwhile the parties represented to the Court that the suit had been settled out of Court and might be dismissed without costs. The Court in dismissing the suit directed that the plaintiff should pay the balance of court fee as ordered already and that it should be first charge on his share of the properties.

Held, that the order of the Court was without jurisdiction and must be set aside, as neither the C. P. Code,

——O. 9, R. 13—*Burden of proof—Allegation of non-*

Evidence Act, S. 114 (e).

It is not incumbent on a defendant who applies to have a decree passed *ex parte* against him set aside on the ground that the summons was not served on him and that the return of service on the same was false, to

and fair methods of procedure. There is no warrant for holding that a presumption should be raised under S. 114, (Ill.) (*e*) of the Evidence Act, to the effect that the process server had regularly and truly effected the service, from the mere fact of the return submitted by him. S. 114 of the Evidence Act does not lay down rules of presumption to be raised under all circumstances. It merely gives illustrations of presumptions of fact to be drawn according to the circumstances of each case, and it is left to the Court to presume when it thinks reasonable to do so. (*Reilly, C.J., Shankaranarayana Rao and Singaravelu Mudaliar, JJ.*) SOMANNA *v.* HEERAJI. 16 Mys L J. 485= 43 Mys.H C.R. 503.

——O. 18, Rr. 5 and 13—*Applicability—Enquiry as to status under Agriculturists' Relief Regulation—Nature and scope of—If falls under R. 5.*

O 18, R. 5, C P. Code, does not apply to an inquiry on the question as to the status of an agriculturist under S. 4 of the Agriculturists' Relief Regulation. S. 4 of that Regulation provides for a primary and independent enquiry as to the status of a party and expressly takes away the right of appeal against the adjudication as to the status, and hence the enquiry for the
adjudication is independent of the trial on
the suit, and therefore falls within the scc
O. 18, C. P. Code, and not under R. 5.
an appeal lies against the decree in the suit cannot make R. 5, applicable. (*Shankaranarayana Rao, Offg.C.J.*

and Singaravelu Mudaliar, J.) GANGE GOWDA *v.* POONAMCHAND. 15 Mys L J. 547= 42 Mys H C.R. 597.

——O. 21, R. 17 (2)—Powers of executing Court to amend—Extent of—Application after 12 years of decree to amend pending application made in time—Amend-

to produce same in Court—Execution against surety—Arrest and imprisonment—Subsequent execution against judgment debtor—Value of movables attached before—If to be deducted.

Certain movable properties belonging to the judgment-debtor under a decree were attached and seized and taken away from his possession, and then entrusted to a surety who executed a muchalika undertaking to produce the movables before Court whenever called upon to do so. The surety failed to produce them, and in execution of the decree he was arrested and sent to jail The decree holder then proceeded to execute his

the decree holder was entitled to execute against him

properties entrusted to the surety.

Held, that it was unjust that the judgment-debtor should be called upon to pay the entire decretal debt, he having been deprived of the properties attached and that deduction should be given in the decree to the
goods attached, the
proceed against the
account to him for
(*Shankaranarayana*
LAKSHMIAH *v.*
RANGIAH SETTY. 16 Mys L J 284= 43 Mys. H.C.R. 339.

——O. 21, Rr 84 and 85—*Scope—Non-compliance.—Effect—Purchase by decree holder with leave—Failure to deposit balance after setting off decree amount due to mistake in sale papers—Sale confirmed by Court without discovering mistake—If void—Application by judgment-debtor for setting aside sale subsequently—If barred—Limitation Regulation, Arts 166 and 181—C. P. Code Regulation, S. 47.*

At a sale in execution of a decree, the decree holder purchased the property for a sum of Rs 561, after having previously obtained leave to bid and to set-off. In the sale proclamation and warrant that amount was by mistake mentioned as the decree-amount, while in fact it should have been only Rs 557—12—0. The mistake was not, however, discovered, and the sale was duly confirmed though the decree holder did not deposit in Court the difference between Rs. 561, which was the sale price and Rs. 557—12—0 which was the correct amount due under the decree. The judgment debtor did not apply to have the sale set aside under O. 21, R. 90, within 30 days of the sale, but after the sale had
uted to have the sale
ground of material
was converted into
ode.

Held, (1) that as the provisions of O. 21, R. 85 had not been complied with—the balance not having been

MYSORE C. P. C. REG. (1911), O. 9, R. 13.

Court is to reject the plaint as directed in O. 7, R. 11, C. P. Code, and not to pass a decree against the plaintiff for the amount of the deficit court fee. Ss. 7 (11) and 9 of the Court-Fees Regulation also prescribe the same procedure, namely, to stay the suit until the additional fee is paid and in case of non payment within the time fixed to dismiss th
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tion is to refuse
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failure by the party directed to pay such court fee. In a suit for partition of immovable property by metes and bounds and for delivery of the plaintiff's share, the plaintiff was ordered to pay an additional court fee within a period of two months. In the meanwhile the parties represented to the Court that the suit had been settled out of Court and n
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——O. 9, R. 13—*Burden of proof—Allegation of non-service*
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S. 114, (Ill.) (*e*) of the Evidence Act, to the effect that the process server had regularly and truly effected the service, from the mere fact of the return submitted by him. S. 114 of the Evidence Act does not lay down rules of presumption to be raised under all circumstances. It merely gives illustrations of presumptions of fact to be drawn according to the circumstances of each case, and it is left
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——O. 18, Rr. 5 and 13—*Applicability—Enquiry as to status under Agriculturists' Relief Regulation—Nature and scope of—If falls under R. 5.*

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MYSORE C. P. C. REG. (1911), O. 21 R. 84.

——O. 21, R. 17 (2)—Powers of executing Court to amend—Extent of—Application after 12 years of decree to amend pending application made in time—Amendment for leave to attach fresh properties—
See MYSORE CIVIL PROCEDURE 43 Mys H C R. 476.

R. 43—*Movables of judgment debtor attached and entrusted to surety bond—Failure of surety to produce same in Court—Execution against surety—Arrest and imprisonment—Subsequent execution against judgment debtor—Value of movables attached before—If to be deducted.*

Certain movable properties belonging to the judg-
ached and seized
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undertaking to
whenever called
upon to do so. The surety failed to produce them, and
the decree holder was entitled to execute against him
extent of the proper value of the goods attached, the decree holder being at liberty to proceed against the
account to him for
(*Shankaranarayana*
LAKSHMIAH *v.*
16 Mys L.J 284=
Mys. H.C.R 339.

——O. 21, Rr. 84 and 85—*Scope—Non-compliance—Effect—Purchase by decree holder with leave—Failure to deposit balance after setting off decree amount due to mistake in sale papers—Sale confirmed by Court without discovering mistake—If void—Application by judgment-debtor for setting aside sale subsequently—If barred—Limitation Regulation, Arts* 166 *and* 181—*C.*

mistake mentioned as the decree amount, while in fact it should have been only Rs 557—12—0. The mistake was not, however, discovered, and the sale was duly
deposit in
ich was the
the correct
ent debtor
O. 21, R.
he sale had
been confirmed a suit was instituted to have the sale declared illegal and void on the ground of material irregularity and fraud, but the suit was converted into an application under S. 47, C. P. Code.

Held, (1) that as the provisions of O. 21, R. 85 had not been complied with—the balance not having been

procedure, namely, to stay the suit until the additional

and not to pass a decree for the amount in case of failure by the party directed to pay such court-fee. In a suit for partition of immovable property by metes and bounds and for delivery of the plaintiff's share, the plaintiff was ordered to pay an additional court-fee within a period of two months. In the meanwhile the parties represented to the Court that the suit had been settled out of Court and might be dismissed without costs. The Court in dismissing the suit directed that the plaintiff should pay the balance of court fee as ordered already and that it should be first charge on his

——**O. 9, R. 13**—*Burden of proof—Allegation of non-*

Evidence Act, S. 114 (*e*).

It is not incumbent on a defendant who applies to have a decree passed *ex parte* against him set aside on the ground that the summons was not served on him and that the return of service on the same was false, to

holding that a presumption should be raised under S. 114, (Ill.) (*e*) of the Evidence Act, to the effect that the process server had regularly and truly effected the service, from the mere fact of the return submitted by him. S. 114 of the Evidence Act does not lay down rules of presumption to be raised under all circumstances. It merely gives illustrations
be drawn according to the
and it is left to the Court
reasonable to do so. (*Reill*
Rao and Singaravelu Mudaliar, JJ.) SOMANNA *v.* HEERAJI. 16 Mys L J 485= 43 Mys H C

——**O. 18, Rr. 5 and 13**—*Applicability*—
as to status under Agriculturists' Relief Regu
Nature and scope of—If falls under R. 5
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O. 18, C. P. Code, and not
an appeal lies against the decree in the suit cannot make R. 5, applicable. (*Shankaranarayana Rao, Offg.C.J,*

Mudaliar, J.) GANGE GOWDA *v.* 15 Mys L J. 547= 42 Mys H C.R. 597.

.7 (2)—Powers of executing Court to amend—Extent of—Application after 12 years of decree pending application made in time—Amendying for leave to attach fresh properties—ability. *See* MYSORE CIVIL PROCEDURE 48. 43 Mys H C R. 476.

——**O. 21, R. 43**—*Movables of judgment debtor attached and entrusted to surety bond—Failure of surety to produce same in Court—Execution against surety—Arrest and imprisonment—Subsequent execution against judgment debtor—Value of movables attached before—If to be deducted.*

Certain movable properties belonging to the judgment-debtor under a decree were attached and seized and taken away from his possession, and then entrusted to a surety who executed a muchalika undertaking to produce the movables before Court whenever called

the decree holder was entitled to execute against him

properties entrusted to the surety.

Held, that it was unjust that the judgment-debtor should be called upon to pay the entire decretal debt, he having been deprived of the properties attached and that deduction should be given in the decree to the
e goods attached, the
proceed against the
to account to him for
. (*Shankaranarayana*
J.) LAKSHMIAH *v.* 16 Mys L J 284= 43 Mys. H.C R. 339.

——**O, 21, Rr. 84 and 85**—*Scope—Non-compliance.—Effect—Purchase by decree-holder with leave—Failure to deposit balance after setting off decree amount due to mistake in sale papers—Sale confirmed by Court without discovering mistake—If void—Application by judg-*
sale subsequently—If
Arts 166 *and* 181—*C.*

ecree, the decree holder purchased the property for a sum of Rs 561. after having previously obtained leave to bid and to set-off. In

O. 21, R.
he sale had
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Held, (1) that as the provisions of O. 21, R 85 had not been complied with—the balance not having been

paid—the sale had to be cancelled and could not be confirmed, (2) even if it were confirmed under a mistake, it was null and void as such confirmation was without jurisdiction, (3) that Art. 166 of the Limitation Regulation did not apply to the case, as the non payment of the balance—as distinguished from a delayed payment—was not merely a m
application being under
governed by Art. 181 of the
(4) that in any view, the
been without jurisdiction and therefore void, there was no period of limitation for such a case and the Court could at any time *suo motu* take action
own order of confirmation whenever
brought to its notice. (*Abdul Ghani*
Mudaliar, JJ.)

——O. 21, R
proclamation—
and not objecting—Right to plead irregularity as ground for setting aside sale.

A judgment debtor who is pre
sale proclamation and who n
thereon and takes a copy of it,
defect in it is rectified. If he do

——O. 21, R. 90—*Material irregularity—Omi in sale proclamation to state assessment or land revenue of properties—Sale, when liable to be set aside—Sub-*

of the pro-
is a material
Code, and
the sale is
liable to be set aside The applicant
has to show that the omission was th
jury or loss, such as a low bid at the s.
and Singaravelu Mudaliar, JJ)
FREUDENBERG & CO., MADRAS.
16 Mys L J. 545=43

——O. 21, R. 90—*New plea not raised in application—If can be taken and considered—Powers set aside sale on new ground.*

Where an application is made to a Court
aside an execution sale on certain stated g

was not duly served—Burden of proof.

Proceedings held and accepted by the Court are regular and true, and the burden of proof is on the

v. FREUDENBURG & CO, MADRAS
16 Mys L J. 545=43 Mys H C.R 286.

——O. 21, R. 103—*Suit to set aside adverse order on application under O. 21, R. 97—Costs of prior unsuccessful application—Right to.*

The costs incurred by an unsuccessful applicant under O 21, R. 97, C. P. Code, can be recovered by him in the suit which he subsequently institutes under O. 21, R. 103, to set aside the adverse order on his application and for possession. (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) NAGAPPA *v* RAMAPPA
I.C R. 693.

ompromise"
Compromise
If can be recorded and enforced against adults only.

A compromise to which some of the parties to the suit
gh on
Court
Where

matter. Where a compromise entered into by adults and

st the adults a compromise which is not

——O. 30—*Applicability—Hindu joint family firm—Promissory note in favour of—Right of suit on—Suit by manager—Competency.*

O. 30, C. P. Code, does not apply to the case of a Hindu joint family firm or business. In the case of a contract entered into with the joint family business, the

cannot sue alone on behalf of the family. The manager of a joint family firm is therefore competent to sue on a

licability and scope—Reference suit—Some parties minors—ed—Award—Validity of—If ce of adult party or by Court

, some of the parties to which are minors, is referred to arbitration without the leave of the Court being obtained under O. 32, R. 7, C. P. Code, it is only the minors concerned and not any adult party

reference to arbitration, the Court has no jurisdiction *suo motu* or at the instance of the adult parties to the suit to set aside the order of reference or the award. (*Singaravelu Mudaliar, J.*) KRISHNAMURTHY NAIDU *v.* PEDDANAGAMMA. 16 Mys.L.J. 158.

Court is to reject the plaint as directed in O. 7, R. 11, C. P. Code, and not to pass a decree against the plaintiff for the amount of the deficit court fee. Ss. 7 (11) and 9 of the Court-Fees Regulation also prescribe the same procedure, namely, to stay the suit until the additional fee is paid and in case of non payment within the time fixed to dismiss the suit. The only course prescribed under both the C. P Code and the Court Fees Regulation is to refuse to give the plaintiff the relief sought and not to pass a decree for the amount in case of failure by the party directed to pay such court fee. In a suit for partition of immovable property by metes and bounds and for delivery of the plaintiff's share, the plaintiff was ordered to pay an additional court-fee within a period of two months In the meanwhile the parties represented to the Court that the suit had been settled out of Court and might be dismissed without costs. The Court in dismissing the suit directed that the plaintiff should pay the balance of court fee as ordered already and that it should be first charge on his share of the properties.

Held, that the order of the Court was without jurisdiction and must be set aside, as neither the C. P. Code, nor the Court Fees Regulation gave the Court the power of the kind assumed by the lower Court. (*Shankaranarayana Rao, J.*) BASAVE GOWDA *v.* GOVERNMENT OF MYSORE. **15 Mys L J. 527.**

——**O. 9, R. 13**—*Burden of proof—Allegation of non-*

Evidence Act, *S.* 114 (*e*).

It is not incumbent on a defendant who applies to have a decree passed *ex parte* against him set aside on the ground that the summons was not served on him and that the return of service on the same was false, to

holding that a presumption should be raised under S. 114, (Ill.) (*e*) of the Evidence Act, to the effect that the process server had regularly and truly effected the service, from the mere fact of the return submitted by him. S. 114 of the Evidence Act does not lay down rules of presumption to be raised under all circumstances. It merely gives illustrations of presumptions of fact to be drawn according to the circumstances of each case, and it is left to the Court to presume when it thinks reasonable to do so. (*Reilly, C.J., Shankaranarayana Rao and Singaravelu Mudaliar, JJ.*) SOMANNA *v.* HEERAJI. **16 Mys L J 485= 43 Mys.H C.R. 503.**

——**O. 18, Rr. 5 and 13**—*Applicability—Enquiry as to status under Agriculturists' Relief Regulation—Nature and scope of—If falls under R. 5.*

O 18, R. 5, C.P. Code, does not apply to an inquiry on the question as to the status of an agriculturist under S. 4 of the Agriculturists' Relief Regulation. S. 4 of that Regulation provides for a primary and independent enquiry as to the status of a party and expressly takes away the right of appeal against the adjudication as to the status, and hence the enquiry for the purpose of that adjudication is independent of the trial on the merits of the suit, and therefore falls within the scope of R. 13 of O. 18, C. P. Code, and not under R. 5. The fact that an appeal lies against the decree in the suit cannot make R. 5, applicable. (*Shankaranarayana Rao, Offg.C.J.*

and Singaravelu Mudaliar, J.) GANGE GOWDA *v.* POONAMCHAND. **15 Mys L J. 547= 42 Mys H C.R 597.**

——**O. 21, R. 17 (2)**—Powers of executing Court to amend—Extent of—Application after 12 years of decree to amend pending application made in time—Amendment praying for leave to attach fresh properties—Maintainability. *See* MYSORE CIVIL PROCEDURE CODE, S. 48. **43 Mys H C R. 476.**

——**O. 21, R. 43**—*Movables of judgment debtor attached and entrusted to surety bond—Failure of surety to produce same in Court—Execution against surety—Arrest and imprisonment—Subsequent execution against judgment debtor—Value of movables attached before—If to be deducted.*

Certain movable properties belonging to the judgment-debtor under a decree were attached and seized and taken away from his possession, and then entrusted to a surety who executed a muchalika undertaking to produce the movables before Court whenever called upon to do so. The surety failed to produce them, and in execution of the decree he was arrested and sent to jail The decree-holder then proceeded to execute his decree against the judgment debtor, but the latter contended that the value of the movables attached and taken away from his possession should be deducted from the amount payable by him under the decree and that the decree-holder was entitled to execute against him

properties entrusted to the surety.

Held, that it was unjust that the judgment-debtor should be called upon to pay the entire decretal debt, he having been deprived of the properties attached and that deduction should be given in the decree to the

goods attached, the

proceed against the

account to him for

(*Shankaranarayana*

LAKSHMIAH *v.*

16 Mys L J 284= 43 Mys. H.C.R 339.

——**O. 21, Rr. 84 and 85**—*Scope—Non-compliance—Effect—Purchase by decree holder with leave—Failure to deposit balance after setting off decree amount due to mistake in sale papers—Sale confirmed by Court without discovering mistake—If void—Application by judgment-debtor for setting aside sale subsequently—If barred—Limitation Regulation, Arts 166 and 181—C. P. Code Regulation, S. 47.*

At a sale in execution of a decree, the decree holder purchased the property for a sum of Rs. 561, after having previously obtained leave to bid and to set-off. In the sale proclamation and warrant that amount was by mistake mentioned as the decree amount, while in fact it should have been only Rs. 557—12—0. The mistake was not, however, discovered, and the sale was duly confirmed though the decree holder did not deposit in Court the difference between Rs. 561, which was the sale price and Rs. 557—12—0 which was the correct amount due under the decree. The judgment debtor did not apply to have the sale set aside under O. 21, R. 90, within 30 days of the sale, but after the sale had been confirmed a suit was instituted to have the sale declared illegal and void on the ground of material irregularity and fraud; but the suit was converted into an application under S. 47, C. P. Code.

Held, (1) that as the provisions of O. 21, R. 85 had not been complied with—the balance not having been

paid—the sale had to be cancelled and could not be confirmed, (2) even if it were confirmed under a mistake, it was null and void as such confirmation was without jurisdiction, (3) that Art. 166 of the Limitation Regulation did not apply to the case, as the non payment of the balance—as distinguished from a delayed payment—was not merely a m[illegible] application being under [illegible] governed by Art. 181 of the [illegible] (4) that in any view, the [illegible] been without jurisdiction and therefore void, there was no period of limitation for such a case [illegible] could at any time *suo motu* take action a[illegible] own order of confirmation whenever [illegible] brought to its notice. (*Abdul Ghani a[illegible] Mudaliar, JJ.*) BYAMMA *v.* HANUMAPPA [illegible] 42 Mys H C R [illegible]

——O. 21, R. 90—*Irregular* [illegible] *proclamation—Judgment debtor* [illegible] *and not objecting—Right to plead irregularity as ground for setting aside sale*

A judgment debtor who is pre[illegible] sale proclamation and who n[illegible] thereon and takes a copy of it, [illegible] defect in it is rectified If he do[illegible] be allowed, at a later stage, to [illegible] ceedings at a later stage and to [illegible] liable to be set aside for such defect or irregularity. (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) SUBBARAMIAH *v.* FREUDENBERG & CO, MADRAS.
16 Mys L J. 545 = 43 Mys H C.R 286.

——O. 21, R. 90—*Material irregularity—Omission in sale proclamation to state assessment or land revenue of properties—Sale, when liable to be set aside—Substantial injury or loss—Onus of proof.*

Omission of assessment or land reve[illegible] perty to be sold in the sale proclamatio[illegible] irregularity falling under O. 21, R. 90 [illegible] if it results in substantial injury or lo[illegible] liable to be set aside The applicant [illegible] has to show that [illegible] jury or loss, such [illegible] *and Singaravelu* [illegible] FREUDENBERG [illegible] 16 [illegible]

——O 21, R [illegible]

[illegible] *was not duly served—Burden of proof.*

[illegible]

on application under O. 21, R. 97—Costs of prior unsuccessful application—Right to.

The costs incurred by an unsuccessful applicant under O. 21, R. 97, C. P. Code, can be recovered by him in the suit which he subsequently institutes under O. 21, R. 103, to set aside the adverse order on his application and for possession, (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) NAGAPPA *v.* RAMAPPA.
[illegible]

[illegible] *recorded and enforced against adults only* [illegible]

[illegible] such a compromise is prejudicial to the interests of the [illegible] matter Where a compromise entered into by adults and [illegible] enforce against the adults a compromise which is not binding on the minors when the adults and minors have together sued for a partition. (*Abdul Ghani and Singaravelu Mudaliar, JJ*) MANICKCHAND *v* KANYALAL.
16 Mys L J. 92 = 43 Mys H C.R. 1.

——O. 30—*Applicability—Hindu joint family firm—Promissory note in favour of—Right of suit on—* [illegible]

[illegible] in favour of the firm. [illegible] *Offg C.J. and Singaravelu* [illegible] [GO]WDA *v.* POONAMCHAND. [illegible] 547 = 42 Mys.H C.R. 597.

[illegible] *ability and scope—Reference* [illegible] *suit—Some parties minors—* [illegible] *ued—Award—Validity of—If* [illegible] *ice of adult party or by Court* [illegible]

[illegible], some of the parties to which are minors, is referred to arbitration without the leave of [illegible]

(*Singaravelu Mudaliar, J.*) KRISHNAMURTHY NAIDU *v.* PEDDANAGAMMA. 16 Mys.L.J. 158

——O. 32, R. 7—*Leave to compromise—Application for—When to be made—If to be before effecting of compromise.*

It is not necessary that leave to compromise under O.

C. P. Code, has to l
minor plaintiff or th
defendant as the cas
petent to apply for
minor plaintiff. (*A*...
liar, JJ.) MANICKCHAND *v.* KANYALAL.
16 Mys L J. 92 = 43 Mys.H.C R. 1.

——O. 34, R. 1 ... *Non-joinder of party inter-*

...gagee's suit are not binding on a

may redeem the prior mortgage ...
his puisne mortgage is barred by limitation. But redemption of the prior mortgage will not give the puisne mortgagee a right to possession unless the prior mortgage is usufructuary. (*Shankaranarayana Rao and Abdul Ghani, JJ.*) SINGAIACHAR *v* THIMME GOWDA 16 Mys L J. 499.

The ordinary rule that to a mortgage suit a person claiming adverse or paramount title is not a necessary or proper party, is not absolute or inflexible In certain cases it may not only be proper but even desirable to implead such a person as a party. O. 34, R. 1, C. P. Code, the object of which is to define the scope of a mortgage suit, pure and simple, merely lays down who are the necessary parties to such a suit; it does not expressly prohibit the addition of party claiming an adverse title. The rule, further, is a
and the matter is one of discretion
long as no question of jurisdiction
Code, as amended in 1911, makes
vesting abundant discretion in the
frame of suits and the joinder of parties and causes of action. (*Shankaranarayana Rao, Offg. C.J. and Sengaravelu Mudaliar, J*) DODDA PUTTE GOWDA *v.* LINGE GOWDA. 16 Mys. L J. 54 = 42 Mys. H.C.R. 739.

——O. 34, R. 4—*Applicability—Duty of appellate Court—Preliminary decree for sale fixing amount and date of payment—Appeal by mortgagee claiming additional amount allowed—Absence of provision as to exten-*

Court allowed
that the trial
...cting that the
...ed as interest
in the preli-
minary decree for payment. But neither the judgment nor the decree prepared explicitly provided for any extension of the time for payment. Payment not having

intended to ...
for payment under O.
nothing was specified in
...in regard to the period
interpreted as giving six
...d (3) that therefore the
...which was well within 3
years and 6 months of the date of the appellate decree was not barred under Art. 181, Limitation Regulation. (*Reilly, C.J. and Abdul Ghani, J.*) SYED OOSMAN & CO. *v.* GURUBASAPPA. 15 Mys L J. 517 = 43 Mys H.C R. 118.

——O. 34, R. 5—*Applicability—Instalment decrees Agriculturists' Relief Act—Final decree for sale ...essity.*

...e provisions contained in O. 34, C. P. Code, relating to the passing of preliminary and final decrees do not govern decrees passed under the Agriculturists' Relief Act. Consequently no final decree for sale is necessary or could be made when an instalment decree is passed under S. 11 of the Agriculturists' Relief Act. (*Shankaranarayana Rao and Nageswara Iyer, JJ.*) *In the matter of* A REFERENCE BY THE PRINCIPAL SUB-JUDGE, BANGALORE. 16 Mys.L J 262.

...ists' Relief Act. When an instalment decree is passed under S. 11 of the Agriculturists' Relief Act, no final decree for sale is necessary as in an ordinary mortgage suit. (*Shankaranarayana Rao and Nageswara Iyer,*

JJ.) CHIKKAMMA *v.* HEERASINGH.
43 Mys H C R. 483.

——O 41, Rr. 4 and 33—*Scope—Appeal—Right of one defendant alone to appeal against whole decree.*

A respondent can, under rules 4 and 33 of O. 41, C. P. Code, claim that the suit of the appellant may be dismissed as a whole and not merely as against him or as against the portion of the property in suit which is retained by hi
and 33 of O.
ceeds on any g
one of them is
whole decree.
liar, JJ.) INT
16 Mys L J 178=43 Mys H C R 38.

——O. 41, Rr 11 and 12—*Second appeal—Admission in specific points only—Power of High Court to*

and there is nothing in Rr 11 and 12 of O 41, C P Code, against such a course The
case must at the subsequent hear
confined to the point or points on w
been admitted and cannot be perm
appeal on all the points taken in
appeal. (*Shankaranarayana Rao*
JJ.) ADIKESHAVA SETTY & CO.
16 Mys L J. 442=43 Mys H.C R. 388.

——O 41, R. 22—*Scope—Right of respondent—Cross objection against fellow respondent against whom right of appeal is barred—Maintainability*

Ordinarily a respondent cannot be allowed to urge an objection against another respondent, when he has omitted to urge that objection
appeal and has lost the right t
regard to it by limitation O. 41
fication of the law of limitation
against other parties to the litig
whose favour has been allowed to

——O 41, R. 33—*Powers of Court under—If to be used to detriment of absent party*

O 41, R 33, C P Code, permits a Court to exercise the power conferred on it *in favour of* a person who is absent, and not to his *detriment* (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) INTOOR POLIA *v.* IVAMANGALA RUDRAYYA. **16 Mys.L J. 178=43 Mys.H C R. 38.**

——O. 44, R 1, proviso—*Objection that decree not contrary to law or erroneous or unjust—When to be taken—Right of respondent to raise at hearing after*

—Award—setting aside—Reference to arbitration bad—If ground for setting aside award.

The grounds for setting aside an award are entirely different from the grounds for setting aside an order of reference. The Court which made the reference to arbitration is not competent to set aside the award under cl 15 of Sch II, C P. Code, on the ground that the reference itself was bad or invalid The phrase "otherwise invalid" in cl. 15 (*c*) refers only to grounds which would invalidate the award and not having any

in name of manager—Partition—Allotment of shares to one number—If "transfer"—Non-observance of formalities—Effect—Right to shares allotted.

There is no provision in the Companies Regulation

a right to shares at a family partition, he becomes the

right to attach such shares allotted to a member in execution of a decree held by the creditor against any other member or members of the family. Nor can the member who gets the shares allotted to him be said to have merely an equitable interest in his favour which could be defeated by the absence of registration in the

cope—"Contract or arrangement"—
—Defects in contract—If can be

Whatever defects there may be in the passing of a resolution by a company, such defects cannot be set up as a defence against actions brought by strangers who enter into transactions with the company. They are not concerned to see to the internal irregularities or indoor
manage
entitled
done
AKKITI

MYSORE COMPANIES REGULATION (VIII

liar, JJ.) ETHIRAJAN *v.* BANK OF MYSORE LTD.
16 Mys L J. 333=43 Mys H C.R. 237.

MYS. COMPANIES REGN. (1923), S. 220.

——(as amended by Regulation XVI of 1923), S. 220—*Resolution for voluntary winding up—Subsequent order for compulsory winding up by Court—Date of winding up—Date of resolution or date of petition for winding up.*

S. 220 of the Companies Regulation does not empower the Court, in making an order for compulsory winding up, to throw the commencement of the winding

OF MYSORE, LTD. 16 Mys L J. 333 = 43 Mys.H.C R. 237.

——S. 235—*Applicability—Official liquidator—If can be proceeded under.*

——S 235—Limitation—Application agai dator for negligence—Limitation for. *See* LIMITATION REGULATION, ART. 36.

43 Mys H C R. 237.

A decree passed by the Assistant Registrar of Co operative Societies is final and cannot be called in question in a Civil Court by reason of S. 43-A (6) (*b*) of the Co operative Societies Regulation. A suit in the Civil Court for a declaration that the suit in which the decree was passed was not maintainable and was barred by time, and therefore the decree is not valid, is not maintainable. (*Abdul Ghani and Nagesvara Iyer, JJ*) SAMPATHKUMARACHAR *v.* AGRICULTURAL AND TRADING CO OPERATIVE S

16 Mys L J

——(as amended in 19

and effect—Mortgage in favour of Co operative Society—Suit on—Subsequent purchaser not impleaded—Decree—Sale under S. 60—Binding character of as

to add as parties to the suit persons having interest in the equity of redemption, as in the case of a suit under the Civil Procedure Code. It cannot be said that a sale

Such interest as he has cannot entitle him to have any claim whatsoever against the purchaser at the sale in

out of Court before expiry of time fixed—Dismissal of suit as prayed by parties—Order directing plaintiff to pay Court fee as ordered—Jurisdiction. *See* MYSORE

MYS. CR. P. CODE REG. (1904), S. 236.

C. P. CODE REGULATION, O. 7, R. 11.

15 Mys L J. 527.

——Ss. 118 and 125—*Order by subordinate Magistrate to keep the peace—Appeal to District Magistrate Competency—Jurisdiction of later to cancel bond taken under order—"Sufficient reason"—Insufficiency of materials on record to justify order.*

No appeal lies to a District Magistrate from an order

to keep the peace made by a Subordinate Magistrate, on the ground that the materials on record are insufficient to justify such an order, which is a "sufficient reason" within the meaning of S. 125. (*Shankaranarayana Rao*

I, In re.

s.H.C.R. 489

CODE RE.

I OF 1904 as amended in 1927),

ition under—Scope of—Report—Form

The record of the statements made by persons before

C.J. and Nagesvara Iyer, J.) CHENNABASAVIAH *v.* GOVERNMENT OF MYSORE. 16 Mys.L.J. 293 = 43 Mys H C R. 220.

——S. 199—*"Complaint made by the husband"—Meaning of—Absence of formal complaint, either oral or written—Husband examined as witness for prosecution—Trial and conviction—Legality—Deposition of husband—If sufficient "complaint".*

No person can be convicted on a charge under S. 498,

cution at the trial cannot take the place of a complaint by the husband which is necessary under S 199. When there has been no complaint, *i e.*, an allegation made

Singaravelu Mudaliar, JJ.) MALLIAH, *In re*

16 Mys L J. 69 = 43 Mys H C.R. 98.

——S. 225—*Scope—Non compliance with S. 222—*

nature of the offence with which he is charged, he cannot clearly be prejudiced by the omission of certain

in, J.) RAMA-

16 Mys.L J. 205.

ability and scope—for intentionally 304-A, I. P. Code, for causing death by rash and negligent act Legality.

The first accused was charged with the offence of murder under S. 302, I. P. Code, for having intentionally

death of one *B* and his brother were charged with abetment of murder under S. 114, I. P. Code. The Sessions Judge who tried them acquitted the 1st accused of murder and also acquitted his brothers, but he convicted the 1st accused under

death by a rash and ne

Held (1) the S. 236,

the framing of an alter

P. Code, in the case, as there was no doubt at all in the case on the part of the Magistrate when he framed the charge as to which offence was made out and S. 237, Cr. P. Code, did not therefore justify the conviction; (2)

a full and fair opportunity of defending himself against the charge under S 304 A, of which he had been convicted, and the conviction was therefore bad in law. (*Reilly, C J. and Singaravelu Mudaliar, J.*) ERE GOWDA *v* GOVERNMENT OF MYSORE.

16 Mys L J. 466 = 43 Mys H.C R 493.

——S. 342—*Applicability and scope—Additional evidence taken in appeal—Failure to question accused on additional evidence—If illegality — Revision—Interference*

S. 342 of the Cr. P. Code applies or

an original trial and not to additional

appeal under S. 428, Cr. P. Code.

might be cases where the accused can

tioned by the appellate Court in regard to the additional evidence taken, the appellate Court's omission to do so is not an omission of anything that is required by law and is therefore not an illegality If such non examination results in any prejudice, however, the High Court may interfere in revision (*Abdul Ghani, J*) SHANKARAPPA *v.* GOVERNMENT OF MYSORE

16 Mys L J. 210.

——S. 342—*Scope—Duty of Judge to question accused—Failure to question—Effect on trial.*

An accused must, under S. 342, Cr. P Code, be ques-

tion an ignorant accused in great detail and it is always

or that the result of the case is in any way affected by the Judge's failure to ask the necessary questions

by Civil Court and sale under C P Code—If necessary —Assignment of debt—If to be registered

A debt due under a hypothecation bond is movable property, and a warrant can be issued under S. 386 (1) (*a*), Cr. P Code. for the levy of a fine by attachment and sale of any movable property. Where a warrant is addressed to the Deputy Commissioner, it would be better and more appropriate for him to approach a Civil Court for attachment and sale of such a debt, but he would all the same be acting within his power if he attaches the debt by actually seizing the hypothecation

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mortgage

debt under a hypothecation bond can be assigned over in writing. It does not require a registered deed. (*Abdul Ghani and Nagesvara Iyer, JJ.*) KALIAPPA CHETTY *v.* VENKATARAMANA SETTY

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Order by Civil Court under S 476-B—Revision—Jurisdiction — Nature of—Civil or criminal. *See* MYS C. P. CODE REGULATION, S 115.

43 Mys H C R 230.

——S. 498—*Sessions Judge—Powers of, to grant bail after refusal by trial Court.*

S. 498, Cr. P. Code, is very wide in its terms, a

ion to en-

accused

s pending

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16 Mys.L J 213.

——S. 520—*Discretion — Interference—Grounds—Omission to give reasons* in extenso—*If justifies interference.*

A Court of appeal or revision should not, under S. 520, Cr P. Code, ordinarily interfere with an order under S. 517, unless it considers that the order of the lower Court regarding the disposal of the property is grossly erroneous or where the interests of justice demand that such an order should not be allowed to stand The fact that the trial Court has not given its reasons for the order *in extenso*, is not by itself a ground for interfering with its discretion. (*Shankaranarayana Rao, J*) GOVERNMENT OF MYSORE *v.* SESHAPPA.

16 Mys L.J 73.

——S 520—*Jurisdiction under — Conditions for exercise of—Absence of appeal or revision, etc., from main decision—If bar to modification of order of disposal of property*

518 or 519. The fact that there are no proceedings pending by way of appeal, revision or reference, etc.,

ot deprive the latter of

r annul the order of

trial Court (*Shan-*

NMENT OF MYSORE

16 Mys L.J. 73.

——S 559—*Successor of abolished Court—Power of District Magistrate to constitute himself or to declare another as successor*

The District Magistrate is entitled under S 559, Cr P. Code, to constitute himself the successor-in office of a Court that is abolished. The power to declare a successor in-office is left to the District Magistrate. If

MYS EXCISE REG. (1901), S. 64.

wants to treat some other Court as successor-in-office, it would be necessary for him to determine such successor by an order in writing But when that is not his intention and he wants to treat himself as the successor-in-office, he can well do so under S. 559. (*Abdul Ghani and Nagesvara Iyer, JJ.*) KALIAPPA CHETTY *v.* VENKATARAMANA SETTY.

MYSORE EXCISE REGULAT

S. 64—*Vicarious Liability — Of licensee—Liability of licensee.*

For any constructive liability of a holder of a license or permit in respect of offences committed by his servant, it must be proved that the servant who committed the offence was not only in the employ of the

benefit of full estate.

Under the Hindu Women's Rights Regulation so far as widows are concerned, enlargement of their estate in what had been their husbands' separate property must be held to take effect not only for the benefit of widows whose husbands died after the Regulation came into effect, but also of widows living on 1—1—1934 husbands had died before that date in the absence exception in the Regulation which would prevent from getting a full estate in that way (*Reilly, C J. and Abdul Ghani, J*) CHICKANARASAPPA *v* HONNURAMMA. **43 Mys H C R. 181=16 Mys L.J 167**

——*Scope—Widow's right to share—Partition effected prior to Act coming into operation—Effe*

A widow of a Hindu co-parcener in family would be entitled to get a share the family, under the Hindu Women's Rights Act provided the partition was made not earlier than the 1st of January, 1934, on which date the Act came into force. But where the partition had been effected before the Act

16 Mys L J 376=43 Mys H C R 415

——**S. 8 (**

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——**S. 8 (1**

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division in status and actual physical separation of property into different lots. (*Reilly, C J and Nagesvara Iyer, J.*) VENKATAPATHIAH *v.* SARASWATHAMMA **16 Mys.L J. 273=43 Mys H.C.R 361.**

MYS. LAND ACQN. REGN. (1894), S. 54.

——S. 9 (1)—*Applicability— Husband of adopting widow dying before Act—Presumption of authority—If arises.*

S. 9 (1) of the Hindu Women's Rights Act cannot be read as referring only to adoptions to men who die after the Act came into force, *i e.*, who die not earlier than

(*Reilly, C.J. and Abdul Ghani, J.*) SANKARAMMA *v.* KRISHNA RAO. **16 Mys L J 376= 43 Mys H C.R. 415.**

——**S 9 (1)**—*Authority to adopt—Presumption—*

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S. 9 (1) of

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, and to give

effect to it, if it is not rebutted. (*Reilly, C J and Abdul Ghani, J.*) SANKARAMMA *v.* KRISHNA RAO. **16 Mys.L J.376=43 Mys.H C.R 415.**

——**S. 10 (2) (g), Exception**—*"Alive"—Construction—Daughter in the womb at death of husband—*

The existence

opens (includ-

ing a daughter in the womb) will prevent a widow, if there is one at the time, from inheriting the property as *stridhana.* (*Reilly, C.J. and Abdul Ghani, J*) CHICKANARASAPPA *v.* HONNURAMMA. **16 Mys L J. 167= 43 Mys H C R 181**

void—Title of bona fide purchaser as against Receiver

on—Appealability.

There is no appeal under the Land Acquisition Regulation against a decision of the Court under S. 49 (1) of the Regulation. The term "award" is used in the Land

MYS. LAND REV. CODE REGN. (1888), S. 37.

Acquisition Regulation as meaning a decision in regard to the amount and distribution of the compensation for the land acquired. The decision of a Court on a reference under S. 49 (1) of Regulation, regarding what land is

acting under—Injunct
ed by Civil Court.

——S. 54—*Const*
rights of persons
defaulter—Purchaser
It cannot be held th
Land Revenue Code
the effect of wiping

missioner to forfeit not all the rights liable to forfeiture under the section but only those of the immediate defaulter, as they stand at the time, if he thinks fit. The sale is always subject to confirmation by the Deputy Commissioner and there is nothing like an immediate sale at the time of the auction. The purchaser would get only such rights as are mentioned in the order of the Deputy Commissioner confirming the sale (*Reilly, C J and Abdul Ghani, J*) NAGARAJA RAO *v* DODDA VENKATEGOWDA 16 Mys L J 252 = 43 Mys H C R 325

——S 193—*Scope—Security bond by Government Officials—Liability under—Right to decide—If one ex-*

43 M.

——S 221 (f)—*Scope—"Respecting of land belonging to Government—Tank constructed by private party on darkhast land—Interference by Government—Suit for declaration of right to maintain bund and for injunction against Government—Maintainability.*

Where a public authority
provisions of an enactment
certain rights and imposes on
it cannot be said that such rights and obligations arise

MYS. LIM. REGN. (1911), S. 19.

out of any contract between the parties, such rights and duties being the creatures of statute. It is no doubt open to the Government to enter into a contract with a private party, *e.g.*, taking a bond from a party or

who wants to avail himself of the benefit of S 4 must institute his suit on the reopening day in the proper Court. If he institutes the suit on the reopening day in a wrong Court which has no jurisdiction to entertain it, and if on return of the plaint, he presents it to the proper Court, though on the same day on which it is returned, he cannot escape the bar of limitation by relying on S 4 (*Shankaranarayana Rao, J.*) SIDDAPPA *v* VEERAPPA 15 Mys L J 508

——S 10—*Applicability—Temporary Manager of temple and its property—If 'trustee"—Suit by Muzrai Officer for recovery of mesne profits of endowed land from temporary manager—Limitation.*

6.

——S. 19—*"Signed"—Meaning of—Letter written by debtor but not signed at bottom—If sufficient acknowledgment*

S 19 of the Limitation Regulation does not require

of the letter, the name of the debtor written at th

MYS. LIM. REGN. (1911), S. 20.

of the letter is a sufficient "signature" for purposes of S. 19. (*Abdul Ghani and Nageswara Iyer, JJ.*) RAJA SEKARIAH *v.* KUMARASWAMI. 16 Mys L.J. 514= 43 Mys.H C.R. 298.

——S. 20—*Applicability—Mortgage debt—Payment by person after parting with interest in property and after personal remedy has become barred—Sufficiency to save limitation.*

In the case of a debt due under a hypothecation bond, if the payment is by a person who has ceased to be personally liable for the debt and who has also parted with all his interest in the property hypothecated, then such a payment is not by a person liable to pay the debt and cannot accrue to the benefit of the creditor, so as to give a fresh period of limitation under S. 20 of the Limitation Regulation. (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) THIMMEGOWDA *v.* THIRUKA. 16 Mys L.J. 198=43 Mys H.C I'

——Art. 36—*Applicability— Application S. 235, Companies Regulation against liquida Limitation.*

A petition under S. 235 of the Companies Regulation against a liquidator of a company for breach of duty to deal with the assets of the company according to law is not governed by Art. 36 of the Limitation

Art. 120 applies to the case. (*Nageswara Singaravelu Mudaliar, JJ.*) ETHIRAJAN *v* MYSORE, LTD. 16 Mys 43 Mys E

——Arts. 103 and 104—*Scope—Suit by Mahomedan widow for dower more than three years after the death of her husband—Maintainability—Possession by her of husband's estate and subsequent dispossession—Effect—Demand for payment made on heirs of husband —If furnishes starting point.*

A suit by a Mahomedan widow for recovery of her dower from the estate of her husband in the hands of his heirs instituted more than three years after the death of her husband is barred by limitation whether the dower be prompt or deferred. If the dower be prompt, the demand would have to be made during the lifetime of the husband, and if no such demand be made, limita tion commences to run on th under Art. 103 of the Li demand made on the heirs in of no avail and does not fu limitation. If the dower be "c

[illegible]

protected.

A transferee having actual knowledge of the invalidity of the transfer is not protected by Art. 134 of the Limitation Regulation. If a person purchases property from a mortgagee with knowledge of the latter's limited interest he can claim no more than the mortgagee's interest even though the purchase purports to be an absolute sale. Art. 134 cannot apply to such a case. (*Nageswara Iyer and Singaravelu Mudaliar, JJ.*)

MYS. POLICE REGN. (1908), S. 39.

GURUSANTHAPPA *v.* YELLAPPA. 16 Mys.L.J. 1= 42 Mys H.C.R. 645.

——Art. 149—*Applicability—Muzrai Officer—Suit by for mesne profits of temple lands under Government control or management—Limitation.*

Art. 149 of the Limitation which is intended for the protection of Government property applies only to a suit by or on behalf of the Government. A suit by the District Muzrai Officer, without any indication or suggestion in the plaint that it is brought by or on behalf of the Government, for recovery of mesne profits of land belonging to a temple which is a Muzrai institution is not a suit to which Art. 149 would apply. (*Reilly, C.J. and Abdul Ghani, J.*) RAJAGOPALACHAR *v.* DISTRICT MUZRAI OFFICER, MYSORE DISTRICT. 16 Mys L J. 413=43 Mys H.C R. 466.

——Art. 181—Applicability—Execution sale confirmed without jurisdiction—Application to set aside under S. 47, C. P. Code—Limitation. *See* C. P. CODE REGULATION, O. 21 RR. 84 AND 85

date. *See* MYSORE C. P. CODE REGULATION, O. 34, R. 41. 15 Mys L.J. 517.

MYSORE NEGOTIABLE INSTRUMENTS REGULATION (VII OF 1917), Ss. 7 and 78—*Promissory note—Joint payees—Suit by one only impleading other as party defendant—Rights of payees inter se—Power of Court to adjudicate upon.*

There is nothing in Ss. 7 and 78 of the Negotiable Instruments Regulation which warrants the contention that a Court is not competent as between two joint promisees to decide as to whether either of them or both jointly are entitled to the money. In a suit on a promissory note by one of two joint payees impleading the Court has power to ad- r se of the payees them- o, Offg C.J. and Nages ANGAMMA, 663=16 Mys L J. 13.

(V OF 1908), *prohibit holding*

e to issue orders though restricted does not empower

Mys.H.C R. 144.

—*If to be stated.*

Police Regulation which requires a District Magistrate or any other magistrate empowered under that section, to state the reasons for the order in the order which he makes under that section. It may often be appropriate for a Magistrate issuing orders under the section to mention in a general way reasons which have led him to issue such orders, but it cannot be held that an order which does not contain such reasons is not lawfully made. (*Reilly, C.J. and Shankaranarayana Rao, J.*) G. R. SWAMY *v.*

MYS. POLICE REGN. (1908), S. 70.

GOVERNMENT OF MYSORE. 43 Mys H C R. 144= 16 Mys.L J. 266.

——**S. 70**—*Burden of proof—Disobedience of order under S. 39—Prosecution—Propriety or legality of order—Duty of prosecution.*

In a prosecution under S. 70 of the Police Regulation

the prosecution produce the order in question and show

the order was not one lawfully made in that sense. (*Reilly, C.J. and Shankaranarayana Rao, J*) G. R. SWAMY *v.* GOVERNMENT OF MYSORE
16 Mys L J 266=43 Mys. H C.R. 144

MYSORE RAILWAYS ACT (IV OF 1894, as amended in 1919), S 95—*Scope—Failure to pay amount—If criminal offence—Power of Magistrate*

to be paid and not any larger sum (*Shankaranarayana Rao, J.*) BORE GOWDA *v.* THE RAILWAY STATION MASTER, MYSORE RAILWAYS. 16 Mys L J 424

——**S 95 (1) and (4)**—*Applicability—Undertaking by passenger to pay fare of fellow passenger—Action under S. 95 (4)—If justified.*

against unde
BORE GOWD
MYSORE RAI

MYSORE
OF 1903), S
Admission
of.

Ss 34 and 35 of the Registration Regulation cast on the Registering officer the duty to enquire whether or not the document produced before him was executed by

attend the parties during the registration and see that the proper persons are present, are competent to act, and are identified to his satisfaction When the person executing a document admits execution thereof before the Registrar, the legal effect is that he enters into obligations under the document (*Shankaranarayana Rao, J.*) ANDANI SETTY *v.* CHANNAPPA.
16 Mys L J. 249.

MYSORE REGULATION (VII OF 1923)—*Scope—Suit for declaration—Wrongful detention of money by*

MYS. T. P. REGULATION (1918), S. 6.

Government—Suit for recovery and for damages for breach of contract—Maintainability.

A suit against the Government for a declaration is barred by Regulation VII of 1923 But a suit can be maintained against Government for wrongful detention of goods or money or for damages for breach of contract. Regulation VII is no bar to such suits (*Reilly* *d Shankaranarayana Rao, J.*) KRISHNA-
GOVERNMENT OF MYSORE
16 Mys L J. 243=43 Mys H C R. 208.

MYSORE REGULATION (II OF 1923), S 2—Scope—Darkhast grant of land by Government—

16 Mys L J. 87

MYSORE SMALL CAUSE COURTS ACT (VIII OF 1911) (as amended in 1928), Sch I, Arts 16 and 22—*Applicability—Lease for fixed period—Lessee holding over—Suit for ejectment and arrears of rent and damages for use and occupation—Jurisdiction of Small Cause Courts.*

Council

The Legislature, by enacting S. 170 of the Town
mean to confine the
r offences under the
il Even a private
or an offence under
Shankaranarayana
v CHENNAPATNA
16 Mys L J 320=

——**S. 6 (g)**—*Scope—Family pension or Pallegar pension—Transferability — Presumption against—If any—Burden of proof*

A family pension or a Pallegar pension cannot be
non-transferable as falling under S. 6
gulation A mere admission that the
aws the pension is a Pallegar does not
d to the inference that it is a political
pension. It must be shown that the pension falls under any of the heads of pension detailed in S 6 (*g*), T. P. Regulation before a transfer of it or a part of it can be impeached (*Abdul Ghani and Singaravelu Mudaliar, JJ*) SANKARAPPA *v.* VENKATANARAYANASWAMY 16 Mys L J. 101=42 Mys H C R 715

——**S. 6 (h)**—*Scope—Pension—Power of attorney in favour of creditor—Agent authorised to draw out pension and to appropriate part towards debt and to pay balance over to principal—Validity of—If opposed to*

S. 6 (h)—Agreement not to revoke power until discharge of debt—Validity—Contract

The term "transfer" inc
amounting to a divestiture
but also such limited and
allowed by law. It implies t
sion or control, an alienatio
terest therein made as between living persons. It is necessarily something more than a mere agreement to transfer. A power-of-attorney executed by a person who is entitled to a pension in favour of his creditor authorising the latter to draw it out from the Treasury as his agent and to appropriate a portion of it towards his commission and debt and to pay the balance over to the executant every month does not operate as a transfer of the pension falling under S. 6 (*h*) of the T.P. Regulation. The pension is drawn as the pension of the executant of the power-of-attorney. The fact that there is an agreement to the effect that the executant of the power-of-attorney will not cancel the power or draw the pension himself or empower any others to do so as long as the debt of the power agent is undischarged, will not make it a transfer of the pension. Though the power-of-attorney be held to be an equitable assignment after the money is drawn, it loses its character as a pension, and the agent who has got an interest in it—to appropriate a portion of the money towards his debt—is like a manager appointed to carry out the directions of the principal, and under S. 202 of the Contract Act, the agency cannot be terminated by the pensioner. The arrangement cannot be regarded as in any way

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ore unenforceable. (*Shankaranarayana Rao and Nagesvara Iyer, JJ.*) CHANNA NANJAPPA *v.* KHALEEL
16 Mys L J. 476 = 43 Mys.H C.R 376.

——S. 54—Effect of—Sale of Hindu joint family property by son—Father absent abroad—Subsequent return and consent to change of patta—If sufficient to convey father's rights. *See* HINDU LAW—ALIENATION. 16 Mys L J. 32 = 42 Mys H C R. 669

title-deeds of the mortgaged property from the mo
and to keep them with him The mere parting with title-deeds by a prior mortgagee does not by itself amount to gross negligence which would deprive him

—Right to compensation—Duty of Court in construing words.

A "step-mother" is not a "dependent" as defined in the Workmen's Compensation Regulation, and is there-

fore not entitled to be awarded compensation for the
et the
ctly as
atter.
NTEN-
132.

——S. 29—*Grounds of appeal—Question of law—Question whether claimant is a dependent.*

The appeal allowed by S. 29 of the Workmen's Compensation Regulation is a limited one, there is an appeal only on a substantial question of law. The question whether a claimant to whom compensation has been awarded is one of the dependents entitled to compensation under the Regulation is a substantial question of law, as it is a question the answer to which depends upon the
J. and Ab.
DURG MI

——S. 29 (1) (a) and (c)—*Scope—Right of appeal—Employer—Appeal by on ground that person to whom compensation has been awarded is not dependent of deceased workman—Competency.*

An appeal on the ground that the person to whom compensation has been awarded under the Regulation for the death of a workman is not a dependent of the deceased and is therefore not entitled to compensation as such falls within Cl. (*a*) or (c) of S. 29 (1) of the Workmen's Compensation Regulation and may be brought by any person aggrieved by the order awarding
eceased workman is a
compensation is not
dependent within the
ho is therefore not

MINES, LTD. *v.* LUCAS. 15 Mys L J. 563 = 43 Mys H C.R. 132.

NEGOTIABLE INSTRUMENT—*Equities—Promissory note—Agreement between payee and maker—Plea of in suit by indorsee—If open—Payment by maker under agreement with payee—If can be set off as against endorsee.*

In cases of negotiable instrument, any equities which have to be pleaded should generally arise out of the very transaction itself and must not arise out of the transactions which are either collateral or independent in character. *A* executed a promissory note in favour of

C. Before that time all except the last instalments were paid by *A* and the last instalment was also paid but only after the endorsement. *C*, the endorsee, who was not a

bill itself and thus provided a mode of partial discharge. *C* the endorsee not being a holder in due course stood in the shoes of *B* and was liable to the same equities to which *B* would have been liable. *A* was therefore enti-

tled to get a credit for the amount paid by him towards the instalments.

Held also, that as all except the last instalments were paid before the note was endorsed, the contract had not remained merely executory. Moreover the agreement by *A* to pay future instalments towards the chit fund should be taken as an accord and satisfaction to the extent of the amount which he had undertaken to pay and which *B* had agreed to accept towards the partial discharge of the promissory note. (*Abdur Rahman, J.*) ELLAPPA CHETTIAR *v.* SESHA AIYAR.

178 I.C. 355=A.I.R. 1938 Mad. 897.

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), S. 4—*Applicability—Absence of promise to pay—Mere admission of liability to pay—Promissory note or acknowledgment.*

Where a document merely acknowledges that certain items of money mentioned therein have been borrowed and that the executant has to repay them on demand, it is not a promissory note because it does not contain an unconditional undertaking to pay. There is no promise to pay but only an admission of liability to pay, and hence it is only an acknowledgment. (*Misra, J.*) RATANJI BHAGWANJI *v.* PREM SHANKAR.

1938 A.W.R. (H.C.) 599=1938 A.L.J. 907= 1938 A.L.R. 864=A.I.R. 1938 All. 619.

——S. 4—'*Promissory note*'—*Document containing promise to pay and not intended to be negotiable.*

A document which acknowledges the receipt of a certain amount by cheque and contains a promise to pay that amount with interest at a certain rate after a certain specified time, is not a promissory note, as it is clearly not intended to be a negotiable instrument. (*Sir George Lowndes*) KARAM CHAND *v.* MIAN MIR AHMAD AZIZ AHMAD 1938 A.L.J. 288= 1938 O.W.N. 326=32 S.L.R. 462=173 I.C. 736= 1938 A.W.R. (P.C.) 99=1938 O.A. 336= 1938 A.L.R. 232=1938 O.L.R. 166=47 L.W. 601= 1938 M.W.N. 493=10 R.P.C. 244=4 B.R. 440= 1938 P.W.N. 441=40 Bom.L.R. 1053= 42 C.W.N. 989=A.I.R. 1938 P.C. 121 (P.C.).

——S. 4—*Promissory note—Payee not specified.*

Where a document does not specify the person to whom the money is to be paid nor does it say that it is payable to the bearer, it is certainly not a promissory note (*Vivian Bose, J.*) NARBADA PRASAD *v.* MT. SUNKI 177 I.C. 889=A.I.R. 1938 Nag. 464.

——S. 8—'*Holder*'—*Hindu join[illegible] sory note in favour of manager—De[illegible] Suit by surviving coparceners —[illegible] Conditions—Succession Certificate Act, [illegible]—Production of certificate after suit—Sufficiency—"Legal representative"—C. P. Code, S. 2 (11).*

In the case of a promissory note executed in the [illegible] other [illegible] nt as [illegible]

Although the debt may [illegible] promissory note is not [illegible] survivorship but by succ[illegible] to sue on the note is pe[illegible] person can be said to ha[illegible] birth or by being a mem[illegible] the coparceners might s[illegible] from the promissory note. If the holder dies, a succession certificate may be granted t[illegible] may then recover upon the promis[illegible] representatives. The succession [illegible] not a condition precedent to the r[illegible]

suit. It is enough if it is produced before the decree is drawn up.

Quære.—Whether the surviving coparceners of a Hindu joint family are the legal representatives of a deceased manager thereof in respect of coparcenary property within the meaning of S. 2 (11), C. P. Code. (*Broomfield and Macklin, JJ.*) SHANTARAM VITHAL *v.* SHANTARAM BHAGWAN. 178 I.C. 423= 40 Bom.L.R. 964=A.I.R. 1938 Bom. 451.

——S. 9—"*Holder in due course*"—*Promissory note by two persons—Payee relinquishing claim against one and agreeing to hold other alone liable—Assignee with notice of arrangement—Rights of.*

If the payee of a promissory note executed by two persons agrees to hold one of them alone liable and relinquishes his claim as against the other executant, and assigns the note to another who takes the assignment with knowledge of this arrangement, the assignee has no better title than his assignor and he can therefore enforce the instrument only against one of the executants [illegible]

[illegible] A.I.R. 1938 Mad. 599=(1938) 1 M.L.J. 757.

——Ss. 9 and 59—*Scope—Promissory note payable on demand—Date of maturity—Test to decide—Notice of demand by holder giving time for payment—Transfer to another before expiry of terms—Transferee—If holder in due course.*

A promissory note payable on demand cannot be regarded as having matured on the date on which it comes into existence. The date of maturity would depend on the circumstances of each case. The test is to ascertain if a demand has been made and refused. Defendant executed a promissory note to *G* on 29-8-1935. On 7-9-1935, *G* sent a notice to the defendant demanding payment by 15-9-1935, failing which, it was mentioned, the promissory note would be assigned. On 14-9-1935, *G* endorsed the note to plaintiff who brought a suit on the same. Plaintiff was not shown to have had any knowledge of the demand made by *G*. It was found that the defendant sent a reply to *G*, who got it only on 16-9-1935.

Held, that the promissory note could not be considered to have matured on the date of its transfer to *G*, the reply sent by defendant to *G* and delivered to *G* on 16-9-1935, assuming that it was a notice of dishonour, could not [illegible] to the plaintiff on [illegible] was not affected by [illegible] Act, but must be [illegible] urse as defined by S. 9. (*Abdur Rahman, J.*) SHAHABUDDIN SAHIB *v.* VENKATACHALAM CHETTIAR. 1938 M.W.N. 897= 48 L.W. 460=A.I.R. 1938 Mad. 911= (1938) 2 M.L.J. 523.

——S. 13—"*Pahunch*"—*Negotiability.*

[illegible] the part of any one to pay the amount mentioned [illegible] Exchange as defined by [illegible] nor a hundi, nor any [illegible] rporting to entitle any [illegible] person of any stated

NEG. INSTR. ACT (1881), S. 27.

sum of money, and is consequently not negotiable. (*Mehta, J.*) JHANGALDAS CHIMANDAS *v.* CHETUMAL BULCHAND. 32 S.L.R. 640=10 B.S. 220= 173 I.C. 591=A.I.R. 1938 Sind 24.

——Ss. 27, 28 and 32—*Promissory note by manager of Hindu joint family—Indorsement—Right of indorsee to proceed against other coparceners not parties to the note.*

An indorsee of a promissory note executed by the managing member or a Hindu joint family is limited to his remedy on the note, unless the indorsement is so worded as to transfer the debt as well and the stamp law is complied with, and, therefore, in the case of an ordinary indorsement the
executant coparceners on
under the Hindu Law.
the law relating to negot
whose name does not app
held liable thereon. (L

——Ss. 30, 37 and 38—*Drawer of hundi—Position of—Nature and extent of liability.*

The drawer of hundi is not a surety for acceptance because the drawee does not become liable until he accepts. Therefore unless and until he does that there is no debt for which he can be held responsible. It follows that there is no principal for whom the drawer can stand surety. Therefore when there is no acceptance the liability of the drawer is as principal debtor under an implied contract of indemnity. His undertaking is conditional only and his liability does not arise unless the instrument is dishonoured, either by non acceptance or by non payment. (*Vivian Bose, J.*) DALSUKH NATHMAL *v.* MOTILAL. A.I.R. 1938 Nag. 262.

——S. 44—*Applicability—Successive renewals of prior handnotes—Notes reserving simple interest, but compound interest charged and renewed—Failure of consideration.*

Where the original handnote in which only simple interest was reserved, was renewed for the amount of the principal and interest calculated on the basis of compound interest, and the same method was adopted in respect of two later renewals, on a
sideration for each renewal had fail
the difference between simple and

Held, that the plea was unsustain
and in
ort and
GH *v.*
401=
10 B.P. 403=A.I.R. 1938 Pat. 324.

——S. 66—*Applicability—Hundi payable on certain day on which it is drawn—Presentment after three days of date—If unreasonable delay.*

Where a hundi which is not made payable at a speci-

which it purported to have been drawn in part payment of the unpaid purchase-money. The hundi reached vendor firm two days before the date on which it was made payable. The vendor presented it to the drawee three days after the fixed date but the hundi could not be cashed due to the insolvency of the drawee,

NEG. INSTR. ACT (1881), S. 115.

Held, that there was no unreasonable delay in presentment and therefore the vendee firm was not discharged from paying the amount of hundi to the vendor firm. (*Tek Chand and Abdul Rashid, JJ.*) HARNAM SINGH *v.* NIKKA RAM. 40 P.L.R. 578= A.I.R. 1938 Lah. 183.

——Ss. 70 and 64—*Pronote—Suit against maker—Presentment, if necessary.*

No presentment is necessary in the case of a promissory note which is not payable at a specified place, when the suit is against the maker of the promissory note. (*Bhide, J.*) NANU MAL *v.* SHIBBA MAL-NAND KISHORE. 40 P.L.R. 975

nt—*Liability of*
employees of a
a forged cheque,
make good the

I.L.R. 1938 All. 634=176 I.C. 334= 1938 A.W.R. (H.C.) 336=11 R.A. 86= 1938 A.L.R. 595=1938 A.L.J. 504= A.I.R. 1938 All. 374.

——Ss. 85 A, 10 and 16—*Payment in due course—What amounts to.*

Under S. 16 if the endorser signs his name only, the endorsement is said to be in blank and such an endorsement makes the negotiable instrument payable to the bearer. The endorsement must however be a genuine and valid endorsement. A bank issued a draft drawn on its branch for payment of certain sum to *H* and *G*. *H* alone appeared at the branch of the bank for the first time and presented the draft for payment. At that time the draft purported to be endorsed in blank on reverse by both *H* and *G*. The manager of the branch at first refused to cash the draft as he did not know *H*. Subsequently however he paid the amount when one *L* who had an account with the bank identified *H* and *H* guaranteed the signature of *G*. The manager took no steps to have the signature of *G* confirmed or identified by any one

and the bank was liable for the payment. (*Addison and Abdul Rashid, JJ.*) P. C. BHANDARI *v.* PUNJAB NATIONAL BANK, LTD. 40 P.L.R. 863= A.I.R. 1938 Lah. 520.

——Ss. 115 and 116—*Drawee in case of need—Liability of—When arises—Previous presentment for acceptance—If necessary—Drawee in the first instance duly accepting bill but failing to pay at maturity—Presentment for payment to drawee in case of need—Liability*

s when presented for payment at maturity, the holder cannot make the drawee in case of need liable upon the bill unless he has previously presented the bill for acceptance to the drawee in case of need. (*Wadia, J.*) J. A. L. DORE *v.* KARACHIVALLA & CO. 177 I.C. 484=11 R.B. 89=40 Bom.L.R. 473= A.I.R. 1938 Bom. 364.

——S. 118—*Scope and effect of—Promissory note—Suit on—Denial of execution and consideration—Proof of execution adduced by plaintiff—Effect—Proof of consideration—Necessity.*

In a suit on a promissory note where the defendant denies execution of the note and the loan if the plaintiff proves due execution
Negotiable Instruments
presumption of considera
when there is nothing pr
tal of that presumption,
to adduce any further
consideration. (*James*
ALIMOHAMMAD.
11 I.

NORTH WESTERN
(XII OF 1881), S. 8
currency of Act XII o
completing 12 years beg
pancy—Death of w
Daughter's son not co-sharing in ... father—Right of

occupancy tenant with the right of occupancy in her own right. On her death her heirs and not the heirs of her husband succeed to her S. 8 of the Rent Act of 1881 does not give any retrospective rights to her husband predeceasing her, and a daughter's son who is an heir of the original tenant and who does not even allege co sharing with him cannot succeed on the death of the widow under S 24 of the Tenancy Act, 1926, which would apply to the case, when the widow dies during the currency of the latter Act (*Darling S M and Bomford J M.*) RAM DAYAL *v.* BINDES
1938 R D. 121 = 19

OATHS ACT, Ss. 5, 6 and 13.

——(X OF 1873), Ss. 6 and 1
age—Neither oath nor affirm
Admissibility of such evidence.

Where on account of her you
affirmation was administered to
render the evidence of such a
(*Weston*) MEHTA *v.* EMPERO
1937 A M L J 104

——S 8—*Construction—'Affect',*
in the name of a third person—Legal

The word 'affect' in S. 8 should be
re-act upon in any way'. An oath
third person does not necessarily 'af
An oath in the form 'I swear by m
one which is prohibited by S. 8 o
(*Weston*) AHMED NUR KHAN *v.* ABDUL MAJID.
1937 A M L J 94.

——Ss. 8 and 11—*Scope—Special oath—Conclusive character of—Representatives of person offering to be bound by oath—If bound—Suit by Hindu father—Dismissal on oath taken by defendant—Second suit on same cause of action by sons*—Res judicata—*C P Code, S. 11, Expl. VI*

The evidence given by a person to whom the special oath is administered at the instance of a party to a suit is when the party offering to be bound by the special

as well in the absence of allegation and proof that the party acting in a representative capacity has been guilty of fraud or collusion or other vitiating circumstances. A subsequent suit by the representatives of the original party would therefore be barred under S. 11, Expl. VI, C. P. Code. When a Hindu father files a suit for

owing to an agreement to be bound by the oath of that
is not a consent decree under
A consent decree means a decree
n compromised. An agreement to be bound by the evidence of a witness is not an agreement to compromise. Such a decree is appealable and cannot be questioned by a separate suit. (*Pollock, J.*) LAXMIBAI *v.* BAJIRAO 172 I C 421 = 10 R.N. 207 = A.I.R. 1938 Nag. 64.

——S 11—*When comes into operation.*

The provisions of S. 11 of the Oaths Act, can only be attracted after the oath has been taken in accordance with the agreement arrived at between parties as mentioned in Ss. 9 and 10 of the Act. (*Pandrang Row and*

by the other party when taking the oath (*Pandrang Row and Abdur Rahman, JJ*) VALLI AMMAL *v.* ARUNACHALA MOOPANNAR 1938 M.W N 110 = 47 L.W. 453 = A.I.R 1938 Mad 385 = (1938) 1 M.L J. 368.

——S 13—Scope of *See* EVIDENCE—CHILD WITNESS (1938) M.W N 90 = (1938) 1 M L J. 289.

OFFICIAL TRUSTEES ACT, Ss 10 and 3 (as amended by order in Council)—*Property situate within Bihar—Power of Calcutta High Court to*

by the order
rustees Act,
to

OFFL. TRUSTEES ACT, S. 27.

situate within the province of Bihar which is outside the division of Bengal. The amended Act makes it quite plain that Bihar is now not only a separate Province but a "Division" which must have an Official Trustee of

Lort Williams, JJ.) TRUSTS OSWALD FORBES v. PHILLIP ARTHUR MCNAUGHT. 42 C.W.N. 942.

OPIUM ACT (I OF 1878), S. 9—*Joint criminal possession—If impossible—Recovery of opium from house where three brothers lived together—All, if guilty.*

It cannot be said that there can in no case be joint criminal possession, where an excisable article, or article the possession of which is an offence, is recovered from a house or place, jointly possessed by several persons. Each case must be decided on the evidence and it is obvious that as a fact several persons may be in joint criminal possession of an article. Where opium was recovered from a house in which three brothers lived jointly,

Held, that in the circumstances of the case the possession must be considered to be that of only the eldest brother. (*Coldstream, J.*) KARTARA v. EMPEROR. 174 I.C. 789 = 39 Cr.L.J. 486 = 10 R.L. 590 = 40 P.L.R. 12 (2) = A.I.R. 1938 Lah. 320.

ORISSA TENANCY ACT (II OF 1913), S. 4 (3)—*Under-raiyat—Raiyat let in for residential and building purpose—Sub-tenant under—Status of.*

For the purpose of determining whether a sub tenant is an under-raiyat as defined by S. 4 (3) of the Orissa

one for any agricultural purposes but for residential and house building, it is not a raiyati tenancy and the sub-tenant is not an under-raiyat. (*Rowland, J.*) SURYAMAL SARAF v. SRIRAM NAIDU. 1938 P.W.N. 633 = 19 Pat.L.T. 622.

——**S. 31 (1)**—*Construction—"Maximum fee"—Meaning of—Proper fee payable—Determination—Evidence—Customary fee.*

The words "maximum fee" in S. 31 (1) Tenancy Act must be taken as indicating necessary in every case that the fee should be 25 per cent. as the proper fee, but that in no case should the Court allow more than 25 per cent. In fixing the proper fee payable to the landlord under S. 250 (e) of the Act, if the Court ... proved by evidence ... long established and ... amount would be the ... S. 31, provided that it ... the purchase money. ... this, and it is proved that the landlord and the tenants had been in the habit for some years before 1913 of making and obtaining mutation of names on payment of a certain recognised proportion of the purchase money that amount which was regarded as reasonable by the parties before and in 1913, should properly be regarded as reasonable after the passing of the Tenancy Act as well. S. 31 (1) only lays down a statutory maximum for the registration fee. (*Courtney Terrell, C.J. and James, J.*) RAJA RAMCHANDRA DEB v. FAKIR PAIKARA. 17 Pat. 325.

OUDH ESTATES ACT (1869).

——**S. 250 (e)**—Mutation fee—Proper fee payable. *See* ORISSA TENANCY ACT, S. 31 (1). 17 Pat. 325.

OUDH CIVIL RULES, R. 269-A, Cl. (d)—*Rental value—Meaning—Suit for under-proprietary rights in*

... in the ... ent at ... But ... ietary ... e rent ... r proprietor. (*Thomas and Zia ul-Hasan, JJ.*) JWALA DEVI v. AHMAD HASAN. 172 I.C. 297 = 1938 O.A. 123 = 10 R.O. 168 = 1938 O.W.N. 23 = A.I.R. 1938 Oudh 40.

——**R. 269-A**—*Cls. (d) and (e) can be applied together.*

Clause (*d*) of R. 269-A is not exclusive of Cl. (*e*) and hence Cls. (*d*) and (*e*) can be applied together. (*Thomas and Zia ul-Hasan, JJ.*) JWALA DEVI v. AHMAD HASAN. 172 I.C. 297 = 1938 O.W.N. 23 = 1938 O.A. 123 = 10 R.O. 168 = A.I.R. 1938 Oudh 40.

——**R. 269-A 1 (b)**—*Pre-emption suit—Valuation for purposes of jurisdiction.*

The valuation of a suit for pre emption for purposes of jurisdiction should, according to R. 269-A 1 (*b*) of the Oudh Civil Rules, be thirty times the land revenue. (*Thomas and Zia ul-Hasan, JJ.*) MANRAJ KUER v. BASANT RAI. 171 I.C. 891 = 1937 O.L.R. 579 = 10 R.O. 145 = 1937 O.W.N. 1217

OUDH COURTS ACT (IV OF 1925) S. 12 (2)—*Last day for application under, a holiday—Filing on the next day—If in time.*

Where the last day for filing an application under S. 12 (2) of the Oudh Courts Act falls on a holiday, it

OUDH ESTATES ACT (I OF 1869), S. 2—*"Heir" and "legatee"—Meaning of.*

The explanation added by the U. P. Act III of 1910 serves only to make plain what is implicit in the true construction of the Act as it originally stood. The explanation is very simply expressed and almost disguises

the legatee of a legatee. The word 'heir' cannot be restricted to those who inherit under S. 22. It is used in S. 23 and applies to every estate whose owner was entered in List I whatever the rule of succession. (*Sir*

A.I.R. 1938 P.C. 113 = (1938) 1 M.L.J. 731 (P.C.).

——**S. 7**—*Object of—Succession to movable property—If affected.*

The object of S. 7 of the Oudh Estates Act is to enable the taluqdar to ensure that the heirlooms mentioned in the inventory should pass along with the estate in all circumstances, but it does not warrant the inference that the legislature intended that the descent of movable property, for which no inventory was made, should be governed by the ordinary law. Where there is no evidence to prove a custom to the contrary, the

non
is g
(Sir
Co

sumption is irrebuttable in the other it may be rebutted by evidence proving a different rule. (*Sir Shadi Lal*) HUZUR ARA BEGAM *v* DEPUTY COMMISSIONER, Go

———S. 8—*Holder of primogeniture sanad electing for inclusion in list II—Rule of succession applicable.*

The holders of primogeniture sanads who elected for inclusion in list II must be deemed to have rejected, as they were entitled to, the rule of succession laid down in their sanads in favour of the rule of succession which characterises estates included in List II. (*Zia ul-Hasan and Hamilton, JJ*) SRI RAM *v* MAHOMED ABDUL RAHIM KHAN. 172 I C 882=1938 O L R 44=1938 O A. 96=1938 O W N 67=10 R O 200=A I R 1938 Oudh 69

———S 12—*Will creating series of life estates—Validity—T. P. Act, S.* 14

Where a will and a codicil create a series of life estates in perpetuity, the disposition of property is invalid under S. 12 of the Oudh Estates Act as well as under S. 14 of the T P. Act. (*Zia-ul-Hasan and Hamilton, JJ.*) SRI RAM *v* MAHOMED ABDUL RAHIM KHAN, 172 I C. 882=1938 O L R. 44=1938 O A. 96=1938 O.W.N 67=10 R O 200=A I R 1938 Oudh 69

———S 13 A (1) and (2)—*Person mentioned in, being legatee—His rights and powers—Rule of succession.*

S. 7 gives to any person mentioned in Cls (1) and (2) of S. 13-A of the Oudh Estates Act who is a legatee the same rights and powers in regard to the estate as a testator and such legatee holds the estate subject to the same conditions and to the same rules of succession as the testator. (*Zia-ul-Hasan and Hamilton, JJ*) SRI RAM *v* MAHOMED ABDUL RAHIM KHAN 172 I C 882=1938 O L R. 44=1938 O A 96=1938 O W N 67=10 R O 200=A.I R. 1938 Oudh 69.

———S. 14—*Effect and object of*

In the case of a bequest which is within the retrospective words with which S 14 opens, and which was made by a taluqdar to a person who would have succeeded according to the provisions of the Act, had they been in force at the time when the succession opened, the consequence attached by the section is that such person "shall have the same rights and powers in regard to the property . . . and shall hold the same subject to the same conditions and to the same rules of succession" as the testator This provision was intended to indicate how the Act was to take effect upon such

of succession
ad and outside
is a question of
language used.
case in which
or part thereof
hat the statute
in some cases
bare general

whether the transferee is an heir apparent, another taluqdar or a younger son In giving the other taluqdar the same rights as the transferor the Act may have been

preserve in such cases the same character to the estate as it would have continued to bear if the succession had been *ab intestato* (*Sir George Rankin.*) GAYA BAKHSH SINGH *v* DEO SINGH 173 I.C. 625=1938 O A 190=1938 O.W N 268 (P C)=65 I A. 137=1938 O L R 137=1938 A L R. 209=4 B R 394=1938 A L J 309=1938 A.W R (P C) 109=10 R P.C. 225=32 S L.R. 433=67 C LJ 62=A I R 1938 P C. 113=(1938) 1 M.L J. 731.

———Ss. 14 and 22—'Heir'—'Legatee—Meaning of—If confined to next immediate heir or legatee *See* OUDH ESTATES ACT, S 2 65 I A 187=(1938) 1 M L J. 731 (P C.).

OUDH LAWS ACT (XVIII OF 1876), S 5—Effect—Position of a wife to whom dower debt is due. *See* T. P. ACT, S. 53—FRAUDULENT TRANSFER 1937 O W.N 1176.

———Ss 6 to 13—*Partial pre-emption—Permissibility*

The Legislature in enacting the provisions of the Oudh Laws Act did not take into consideration the case of a composite sale deed in which several distinct properties are sold together for a lump price Accordingly suits for pre emption of part of the properties sold which necessarily involve apportionment of price are not maintainable (*Srivastava, C J and Smith, J*) BAIJ NATH *v* MAHABIR PRASAD, 13 Luck 672=171 I C 987=1937 O W N 1202=1938 O A 1=10 R O 151=A I R 1938 Oudh 37

———S 9—*Under proprietor—If can pre empt a share of superior proprietary right.*

An under-proprietor is not entitled under S 9 of the Oudh Laws Act to pre-empt a share of the superior proprietary rights. 61 I A 235, Rel on. (*Thomas and Zia ul-Hasan, JJ*) MANRAJ KUER *v* BASANT TAI 171 I C 891=1937 O L R 579=1937 O W N 1217=10 R O 145

OUDH RENT ACT (XXII OF 1886), S 3 (10)—Applicability—Trespasser assessed to rent by compromise decree *See* OUDH RENT ACT, Ss 53(2) 54, 127 AND 3 (10) 1938 O W.N. 980

———S 5—*Occupancy rights—Muqaddam recorded as occupancy tenant—Transferee of rights of under foreclosure of mortgage—If becomes occupancy tenant—Status—Entry as occupancy tenant in papers—Effect.*

OUDH RENT ACT (1886), S. 5.

A transferee of the rights of a muqaddam—the rights being transferred as a result of foreclosure of a mortgage—who is admitted as a tenant by the landlord is only a statutory tenant and not an occupancy tenant. The fact that the transferee is recorded in the papers as occupancy tenant, as his transferor had been so recorded before the transfer, does not make him an occupancy tenant, when there is no evidence that the landlord ever recognised him as occupancy tenant. (*Bomford, J.M.*) DULARA *v.* NARAIN SINGH.
1938 R.D. 18=1938 O.W.N. 27=1937 A.W.R. 1213.

——**Ss. 5 and 6**—*Unregistered perpetual lease conferring heritable rights—Value and effect of.*

Though the conferment of occupancy rights under S. 6 of the Oudh Rent Act can only be effected by a registered instrument, yet the concluding paragraph of S. 5 saves agreements in writing between landlord and

[illegible]

——**S. 7-A**—*Deed of gift executed in respect of* Sir *land—Donor subsequently suing to have it set aside on ground of fraud—Suit withdrawn on payment of consideration by donee—Effect of—Donor, if entitled to ex-proprietary rights.*

Under S. 7-A of the Oudh Rent Act no ex-proprietary rights can accrue as the result of a volunt- [illegible] through a deed of gift. Where, after th[illegible] a deed of gift in respect of certain *Sir* [illegible] sues to have that deed set aside on the ground that it had been executed as a result of fraud and undue influence, and the suit is compromised and withdrawn on

[illegible]

prietary rights therefore accrue to the donor in the *Sir* land in question. (*Darling, S.M. and Bomford, J. M.*) GHULAM MUSTAFA *v.* HASIBULNISA.
1937 R.D. 439

——**S. 7-A**—*Exproprietary tenancy—When commences—Date of sale or date of possession.*

According to S. 7-A of the Oudh Rent Act a person becomes an ex proprietary tenant as soon as his proprietary rights are transferred. When a person's proprietary rights are sold in Court auction, he becomes an ex proprietary tenant of his *sir* on that date, and not on any subsequent da[illegible] obtain actual [illegible] *Hasan, J.*) [illegible] SINGH. 177 I[illegible] 19[illegible]
A.I.R. 1938 Oudh. 204

[illegible]

the mortgagor, and his sons after his death can claim at any time ex proprietary rights in the *sir* lands and can resist ejectment. (*Darling, S. M. and Bomford, J.M.*) RAJ BAHADUR SINGH *v.* SAT NARAIN.
1938 R.D 481=1938 O.W.N. 485=1938 A.W.R. (B.R.) 272.

——**S. 19-A**—*Power to make remissions—Conditions*

OUDH RENT ACT (1886), S. 48.

—Fall in prices, if a ground—Resolutions of Local Government—Value.

S. 19-A of the Oudh Rent Act authorizes the Local Govt. or any authority empowered by it in this behalf to remit or suspend land revenue, and the Collector to remit *only* on the ground of an agricultural calamity. A fall in prices cannot be said to be an agricultural calamity. It is just the reverse, as prices fall when production is abundant. Any resolution of Local Govt. as to remissions have no legal basis. (*Zia ul-Hasan, J.*) RAM NARAIN *v* CHANDRA SHEKHAR. 175 I.C. 50=10 R.O. 307=1938 O.W.N. 535=1938 O L R. 259=1938 A.W R. (C C.) 54=1938 R D 567=1938 O.A. 663=A.I.R. 1938 Oudh 166.

——**S. 33**—*Defendant's ancestor declared* sir *holder in* 1869—*Status of defendant—Liability of his rent to enhancement.*

[illegible]

His rent is, therefore, not liable to [illegible] der S. 33 of that Act. (*Darling, S.* [illegible] BAHADUR KHAN *v.* SUBHKARAN
1938 R D. 195=1938 A.W.R. (B R.) 122=1938 O A. 229=1938 O.W N. 165.

——**Ss. 33 and 35**—*Scope of—Rent of holding governed by S. 79 of Land Revenue Act—Liability to enhancement.*

Where a holding is governed by S. 79 of the U. P. [illegible] not [illegible] of [illegible] EN-DRA PRATAP SINGH *v.* CHANDRA PAL.
1938 O.W.N. 451=1938 R D. 403=1938 A W.R. (B.R.) 280.

[illegible]

As a partition does not create a fresh contract of tenancy, if ten years have been completed, the benefit of Ss. 36 and 37 cannot enure in favour of the tenants, and they are liable to be ejected. (*Mehta, J.M.*) BADRI PRASAD *v.* RAJENDRA SINGH.
1938 A.W R. (B.R.) 266=1938 R D. 770=1938 O.W.N. 955=1938 A.L J. (Supp.) 89.

——**S. 39**—*Assessment to wet rate—Holding becoming wet since last settlement—Fair and equitable rate, if can be applied.*

Where an assessment to wet rates is contested [illegible] excess of the fair and equitable rate payable by statutory [illegible] follows that where [illegible] ecome entirely wet [illegible] had been framed [illegible] rates which are [illegible] uitable rate paya- [illegible] (*Darling, S. M. and Bomford, J. M.*) RAMESHWAR *v.* BEHARI SINGH.
1938 O.W.N. 86=1938 R.D. 29=1938 O.A. 160=1938 A.W.R. 23 (B R.).

——**S. 48**—*Widow of statutory tenant recorded as heir in presence of sons—Zamindar's right to sue widow alone for ejectment.*

OUDH RENT ACT (1886), S. 52.

Where the widow of a statutory tenant is recorded on his death as his heir, although he has *left* sons, the

Oudh Rent Act for ejectment, i
costs payable is included in tl
certain date, there is nothing a
for S 4 last clause allows an
to contract himself out of the provisions of the Act. As such if the tenant failed to pay the entire amount includ ing costs as agreed, the ejectment of the tenant is not illegal and the remedy under S 108 (10) is not availa ble. (*Mehta, J M*) BALLU SINGH *v* UMA SHANKAR. **1938 R D 761 (1)=1938 O.W.N 934= 1938 A W.R (B.R) 380.**

——**Ss. 52 and 108 (10)**—*Deposit within time, in terms of compromise—Mistake in calculation—Eject-*

the total decretal amount, interest, and costs. An eject ment under these circumstances is illegal because no occupancy tenant could be ejected from land otherwise than in execution of a decree for *arrears of rent*, and a suit under S 108 (10) of the Rent Act lies (*Mehta, J M*) MAHARAJA *v* MAHABIR **1938 R D 772 (1)= 1938 O W N 956=1938 A.W R (B R.) 267 (2)=**

——**Ss 52 and**
for ejectment wit-
of time—Power of Court.

Where a suit under S. 108 (4) read with S 52 of the Oudh Rent Act is compromised and a consent decree for ejectment with a period of grace is passed, on the expiry of that period of grace, the decree for the eject ment of the judgment-debtor becomes operative and no

Landlord's remedy against tenant.

Where a tenant is holding land on
rent and the rent was favourable by
sion, the landlord could not eject the h
tory tenant but must proceed under the resumption chapter of the Oudh Rent Act (*Darling, S M and Mehta, J.M*) HUB LAL *v.* DWARKA NATH **1938 R.D 748=1938 O W.N. 901= 1938 A.W R (B.R.) 378**

——**Ss. 53 (2), 54, 127 and 3 (10)**—*Trespasser assessed to rent by compromise decree—If a tenant—Liability to ejectment by notice.*

Where a suit under S. 127 of the Rent Act is compromised and the trespasser is assessed to a certain rent payable within a particular time, such a trespasser has merely agreed to pay rent for the period of his trespass; he is under no contract for the payment of rent in the future and he is not liable to pay rent within the mean

OUDH RENT ACT (1886), S. 67.

ing of the definition of a tenant in S. 3 (10) In such a case the trespasser is not a tenant within the description
can be served with a notice of
f the Act. The trespasser can
st after the period agreed, for
arling, S. M) PIRTHWIPAL
NGH. **1938 O W N. 980= 1938 R.D. 793.**

cope—Mandatory—Non compli-
. *See* OUDH RENT ACT, S. 108
A.W.R 1211=1937 R D. 564.
at between joint proprietors—
ing proprietary interest—Status

int proprietors, the entire
illage fell to one of them,
by sufferance and had no
sir or *khudkasht* status, his position is that of a mere trespasser tenant and on non-payment of rent is liable to be ejected. (*Mehta, J.M*) RAM LAL *v.* JAI DEVI. **1938 R.D. 750=1938 O.W.N. 904= 1938 A.W.R. (B R) 376.**

——**S. 61**—*Right to apply under—Arrears fully realised.*

Though no doubt a landlord is entitled even after ejectment to realise his arrears, he is certainly not
to realise the
Rent Act and
that the decree
J. M.) HARI

1938 R D. 768=1938 O.W N. 931= 1938 A.W.R. (B R) 383

——**S. 62 A (1) (b)**—*Ejectment under—Facts to be proved.*

According to S. 62-A (1) (*b*) of the Oudh Rent Act, in order to entitle a landlord to eject a statutory tenant,

S. 62 A, if the sub-lessees are not in possession contrary to law at the time of the institution of the suit (*Darling S.M and Mehta, J M*) LALTU *v.* BIJAI RAJ KUAR. **1938 O W N 746=1938 R D 669= 1938 A.W R (B R) 265=1938 A L J. Supp 101.**

-Parties to

b) of the
Zamindars
ants whose
It is not
ie recorded
it bad because the other
e tenant are not included
Bomford, J M) BAJ
MATA BHIKH.
1938 R D 136=1938 A.W.R 74 (B R).

——**S. 67 (1) (b)**—*Notice of ejectment—Plot found to be grove-land—If to be excluded*

Where a plot is found to be grove-land by the Courts, and there are found to be enough trees on the plot as recorded in two settlements to give it the character of a grove, such plot should be excluded from the operation of a notice of ejectment under S. 67 (1) (*b*), as being the grove-land of the tenant. (*Darling, S. M, and Bomford, J. M.*) BAJRANG BAHADUR SINGH *v.* MATA BHIKH. **1938 R D. 136=1938 A.W.R 74 (B R)**

——**S. 67 (1) (b)**—*Notice under—Cancellation—Right to apply—Family acquiring under-proprietary rights—Record in the name of one member alone—*

OUDH RENT ACT (1886), S. 67.

Member in whose name it is not recorded, if can apply for cancellation of notice against him.

Where under-proprietary rights acquired by a joint Hindu family are recorded in the name of one of the members alone, another member against whom a notice of ejectment is issued under S. 67 (1) (*b*) of the Oudh Rent Act, cannot get it cancelled on the ground that his name is not recorded. His interest cannot be denied though his name might not have been recorded owing to an error. (*Darling, S. M. and Bomford, J.M.*) BHAWANI SINGH *v.* SHEO SINGH.

1938 R.D. 258 = 1938 O.W.N. 375 = 1938 A.W.R. (B.R.) 197.

——S. 67 (1) (b)—*Under-proprietor, given a permanent lease after the coming into force of the amended Act—If protected from ejectment.*

Where on the date when the amended Act came into force, a person was an under-proprietor, he cannot acquire statutory rights in the village in which he has under-proprietary rights. Such a person though he is given a permanent lease by the Talukdar after such date, is a non statutory tenant and is liable to ejectment. (*Darling S. M.*) JAFAR *v.* SURAJ PRASAD.

1938 O.W.N. 449 = 1938 R.D. 424 = 1938 A.W.R. (B.R.) 278.

——S. 68—*Person holding under thekanama executed by exproprietary tenant—If can be ejected as sub-tenant within the period of theka.*

[illegible]

sub-lessee is clearly estopped from treating him as sub-tenant from year to year. He could not be ejected before the expiry of the theka or the thekanama is declared by a Civil Court to be of no legal efficacy. (*Mehta, S. M. and Harper, J. M.*) KUNJ BEHARI LAL *v.* RAGHUBIR DAYAL. 1938 R.D 889 = 1938 A.W.R. (B.R.) 339 = 1938 O.W.N 1144.

——S. 68-A—*Suit to eject statutory tenant for illegal sub-letting—Death of tenant during pendency of suit—Adding of minor son—Suit if can be decreed against him.*

Where in a suit to eject a statutory tenant on the ground that the holding had been illegally sub-let, the tenant dies during its pendency and his minor son, is substituted for him on the record, the suit cannot be decreed for the reason that the minor is not liable to ejectment merely for sub-letting by virtue of S. 68-A of the Oudh Rent Act. (*Darling, S. M.*) BAJRANG BAHADUR SINGH SANTO PRASAD.

1938 O.W.N. 443 = 1938 R.D. 423 = 1938 A.W.R. (B.R.) 282 (1).

——S. 107 B—*Rent when favourable.*

Rent is supposed to be favourable when it is less than the revenue payable plus cess. (*Darling, S.M. and Mehta, J.M.*) HUB LAL *v.* DWARKA NATH.

1938 R.D. 718 = 1938 O.W.N. 901 = 1938 A.W.R. (B.R.) 378.

——S. 108 (4) and (10)—*Tenant ejected for failure to satisfy decree for rent—Amount of decree subsequently reduced in appeal—Tenant applying to be restored to possession—Proper remedy—C. P. Code, Ss. 144 and 151.*

Where a tenant was ejected by a suit under S. 108 (4) read with S. 61 of the Oudh Rent Act for failure to satisfy the decree for arrears of rent, but after the ejectment the amount of the decree was reduced in appeal, the tenant cannot on the strength of the appellate judgment, ask the possession of the holding to be restored to him under S. 144 or 151, C. P. Code. His remedy lies by way of a suit under S. 108 (10) of the Oudh Rent Act. (*Darling, S. M.*) KEDAR NATH *v.* BIRENDRA BIKRAM SINGH. 1938 R.D. 173 = 1938 O.A. 227 = 1938 O.W.N. 150 = 1938 A.W.R. (B.R.) 103.

——Ss. 108 (8) and 127—*Notice of ejectment—Denial of the occupancy rights of plaintiff—Absence of any sub tenancy—Status of defendant—Liability to ejectment.*

Where a transfer of occupancy rights in favour of the plaintiff's predecessor has been given effect to in the khatauni and had been all along accepted by the defendant and before him by his predecessors who had transferred the occupancy rights, it is not open in a suit to contest the notice of ejectment to plead that there was no transfer of occupancy rights in favour of the plaintiff's predecessors. The proper remedy is to set aside the transfer in the Civil Court. In the absence of that the defendant cannot resist ejectment as a trespasser. (*Darling, S.M. and Marsh, J. M.*) RAMPHER *v.* BUDHAI MURAO. 1938 A.W.R. (B.R.) 263 = 1938 R.D. 711 = 1938 O.W.N. 786

——S. 108 (8)—*Suit under—Major treated as minor and father's name wrongly given—Misdescription, if vitiates notice—Absence of prejudice.*

Where a notice of ejectment treated a person as a

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KUNWAR. 1938 A.L.J. (Supp.) 80 = 1938 O.W.N. 939 = 1938 R.D. 781 = 1938 A.W.R. (B.R.) 334.

——S. 108 (8)—*Suit under—Superimposition of occupancy tenant, over the tenants actually cultivating—Payment of rent to occupancy tenant—Sub-tenants, if can resist ejectment.*

Where an occupancy right is created over the head of the cultivating tenants in possession, and these tenants pay rent to the occupancy tenant, they are liable to be ejected as sub-tenants and cannot succeed in a suit to contest the notice of ejectment. (*Darling, S. M.*) MATA PRASAD *v.* JADUNATH KUNWAR.

1938 A.L.J. (Supp.) 80 = 1938 O.W.N. 939 = 1938 R.D. 781 = 1938 A.W.R. (B.R.) 334.

——Ss. 108 (9) (c) and 108 (10)—*Compensation for forcible dispossession—Suit for—Cause of action—Starting point—Proper procedure.*

Prima facie when a landlord takes forcible possession of a tenant's field, the cause of action for a suit under S. 108 (9) (*c*) of the Rent Act arises on that very date. There is no reason why the dispossessed tenant should not sue at the same time under both Ss. 108 (10) and S. 108 (9) (*c*) of the Act. (*Darling, S. M. and Bomford, J. M.*) RAM DULAREY *v.* SUCHITLA.

1938 R.D. 375 = 1938 O.W.N. 373 = 1938 A.L.J. (Supp.) 43 = 1938 A.W.R. (B.R.) 215.

——S. 108 (10)—*Applicability—Illegal ejectment—Ejectment under decree not in conformity with S. 60 (2 a)—Tenant's right to sue under S. 108 (10).*

Illegal ejectment does include ejectment by a process of law if the process used is wrong. Under the mandatory provisions of S. 60 (2 a) of the Oudh Rent Act, it is for the landlord to see that the decree is properly prepared and that the tenant is not left in doubt as to the exact amount which he has to pay in order to escape ejectment. If the decree does not show the

exact amount of interest due, the ejectment of the tenant under such a decree is technically an illegal ejectment which gives the tenant a right to sue under S. 108 (10) of the Act. (*Darling, S.M. and Bomford, J.M.*) KHURSHEDUNNISA BEGAM *v.* HEMRAJ.
1938 O W.N. 101= 1937 R.D 564=1937 A W.R. 1211.

——S. 108 (10)—Illegal ejectment under S. 52 of the Rent Act—Suit under S. 108 (10) if lies. *See* OUDH RENT ACT, SS. 52 AND 108 (10).
1938 A L J. (Supp.) 90.

——Ss. 108 (10) and 127—*Remedy of ejected pro-*

ejected under S. 127 of the Act (*Yorke, J*) SHEIKH BARSATI *v.* SARJU PRASAD 1938 R D 855= 1938 O A 823=1938 A.W R (C C.) 104= 1938 O L.R 486=1938 O.W N 1074

——S 108 (10)—*Scope—Tenant illegally ejected—Subsequent introduction of new tenants by landlord—Suit by tenant for possession in Revenue Court—Maintainability—Rival tenants—If necessary parties*

A tenant who has been illegally ejected by his landlord by a wrong process of law has a right to recover possession by way of a suit in the Revenue Court under Cl (10) of S. 108 of the Oudh Rent Act against the landlord. He is not bound to implead as parties to the suit subsequent lessees introduced by the landlord after the illegal ejectment, which is the cause of action. Nor is the tenant bound to go to the Civil Court for redress merely because a new set of rival tenants have been introduced subsequent to the ejectment complained of. (*Darling, S M. and Bomford, J M*) KHURSHEDUNNISA BEGAM *v.* HEMRAJ 1938 O.W N. 101= 1937 A W.R 1211=1937 R D. 564

——S. 108 (15)—*Suit by co-sharer against lambardar for share of profits—Lambardar, if can be debited with profits of land held by other co sharers in excess of their share.*

In a suit by a co sharer against the share of profits, the lambardar cannot the profits of lands held by other co-sh their proper share, because a lambardar as such is not competent to sue his co-sharers for recovery of such excess profits either as profits or as rent (*Srivastava, C. J and Smith, J*) MUNIR AHMAD *v* AMINA BIBI
1938 R D. 263=1938 A W R. (C C.) 24= 1938 O A. 152=1938 O W N 181.

——S. 108 (15)—*Suit for profits against lambardar —Lambardar not assessing rent on ex-proprietary tenancy*

rent assessed does not entitle a co-sharer to obtain a decree for profits against him on gross rental. (*Hamilton, J*) MUNIR AHMAD *v* ABDUL KHALIQ
1938 R D 388=1938 O.W N. 306= 1938 O A. 478=1938 A W.R. (C C.) 34

——S. 108 (15)—*Suit for profits—Mortgage by co*

single unit and if they had together received more profits than they were entitled to, then decree the suit (*York, J*) BISHESHWAR SINGH *v.* GAYA BAKSH SINGH
177 I C. 196=1938 O.L R. 390=1938 R D. 755= 11 R O. 32=1938 A W.R (C C.) 90= 1938 O.A. 649=1938 O W N. 878= A.I.R 1938 Oudh 227.

——S 108 (15)—*Suit under—Ex-proprietary rent not assessed—Lambardar, if liable for profits in respect of ex proprietary land.*

It is not the exclusive duty of the lambardar to apply for the assessment of ex-proprietary rent and if such rent is not assessed, co-sharers are as much to blame as the lambardar. A lambardar cannot, therefore, be charged with negligence for not getting ex-proprietary rent assessed and consequently cannot be made liable to the co-sharer suing under S 108 (15) of the Oudh Rent Act for any profits in respect of the ex proprietary land. (*Srivastava, C. J and Smith, J*) MUNIR AHMAD *v.* AMINA BIBI 1938 R D. 263= 1938 O.A 152=1938 A.W.R. (C C.) 24= 1938 O.W N. 181.

——S 127—*Holding of deceased occupancy tenant in possession of his relation who is not his legal heir—Landlord's right to eject him.*

A person who is related to a deceased occupancy tenant cannot claim possession of the holding when the legal heir is in existence The landlord can very properly bring a suit under S. 127 of the Oudh Rent Act against him, whether or not the legal heir has actually surrendered the holding in favour of the landlord (*Zia ul-Hasan, J*) BISHWA NATH SARAN SINGH *v* SRI NARAIN SINGH 173 I C 616= 1938 A W R. (C C) 25=1938 O L R 124= 10 R.O 223=1938 O A 204=1938 O W.N 225= 1938 R D 504=A I R. 1983 Oudh 98

——S 127—Remedy of ejected proprietor—Suit in Civil Court, if lies *See* OUDH RENT ACT, SS. 108 (10) AND 127. 1938 O.A. 823=1938 O.W N 1074.

——S. 127—*Suit under—Defendant making claim to proprietary right—Party to be referred to Civil Court.*

If a party makes a claim to proprietary right and it which has been en it is for the to establish the on S 127 of the Oudh Rent Act Where, therefore, in a suit under S. 127 of the Act, it appears that the defendants have accepted without demur the entries in three settlements which give the proprietary title in the suit land to the plaintiff and record them as mere grove-holders or as tenants without fixation of rent, and the defendants fail to prove that they have on any occasion asserted any proprietary right in this area, their claim to proprietary rights in

——S 129—Applicability—Ex-proprietary rights—Claim to—Enforcement—Limitation—U P. Land Revenue Act *See* U P. LAND REVENUE ACT, S 36
1938 A W.R (B R.) 104=1938 R D 168

——Ss 129 and 132—*Applicability—Revenue paid for joint lambardar—Suit for compensation—Limitation*

Where a suit is for compensation for revenue paid by the lambardar on account of a joint lambarbar, it is covered by the third part of Cl 16 of S 108 of the

OUDH RENT ACT (1886), S. 132.

Oudh Rent Act and such a suit is governed not by S. 132 but by S. 129 of the Act and should be instituted within one year from the date of the accrual of the cause of action. (*Thomas, C J.*) REJENDRA BAHADUR SINGH *v.* RAJA SRIPARTAP BAHADUR SINGH.

1938 O.W.N. 831=1938 A.W R. (C.C.) 79=
1938 O.A. 629=1938 R.D. 737=
1938 O.L.R. 386=177 I.C. 191=
11 R O. 31=A.I.R. 1938 Oudh 260.

——S 132—Applicability—Suit for compensation for revenue paid for joint lambardar. *See* OUDH RENT ACT, SS. 129 AND 132.

1938 O.A. 629=1938 O.W.N. 831.

OUDH SETTLED ESTATES ACT (1917), S. 15— *"To be or to have vested"—Interpretation.*

It would be contrary to a sound construction that the words "to be or to have vested" in S. 15 of the Oudh

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possession of the bulk of the land in suit at a uniform rent from the time of the first settlement and that his ancestors had been old proprietors of the village, the Court can not presume that the plaintiff is an under proprietor under the provisions of the above rule. (*Srivastava, C.J. and Hamilton, J.*) BABU RAM *v.* TRIBHAWAN BAHADUR SINGH. 172 I C. 107=

1938 A.W R. (C.C.) 7=1938 R D. 151=
10 R.O. 154=1937 O.W.N. 1:

PARDANASHIN LADY—*Deed by—Binding* *racter—Duty of Courts in deciding.*

The rule is firmly established that it is incumben a Court when dealing with the disposition of her pro- perty by a pardanashin lady, to be satisfied that the transaction was explained to her and that she knew what she was doing. Where a Mah. lady was admitted- ly a pardanashin lady unable to read was no evidence to show that she k the contents of a mortgage deed whi her share in a house liable for the band's debt, it was held it was not possible to hold that her liability had been established. (*Sir Shadi Lal.*) PEOPLE'S BAN GHULAM JAN.

1938 O.A. 7

1938 P.W.N 880=176 I.C. 773=
A.I R. 1938 P.C. 276=(1938) 2 M.L.J. 902 (P.C.)

PARSI MARRIAGE AND DIVORCE ACT (1936), S. 40.

——*Deed by—Burden of proof—Proof of independent advice—If necessary.*

In an action by an old pardanashin lady to set aside a deed of gift executed by her in favour of the defendant, it is for the defendant to discharge the onus of showing that the plaintiff really understood and intended to execute the deed of gift, but it is not neces- sary to prove independent advice. (*Lord Maugham.*) SIKANDAR BEGAM *v.* ZULFIKAR WALI KHAN.

172 I C. 720=42 C W.N. 332=1938 O L R. 66=
1938 A.L R. 90=1938 A.W.R. 28 (P.C)=
47 L W. 214=1938 O.W.N. 97=
1938 A L J. 176=1938 P W.N. 166=4 B R. 272=
10 R P.C. 167=1938 O A 247=1938 M.W N. 503=
40 Bom.L.R. 697=32 S L R. 285=
A.I R. 1938 P.C. 38 (P.C.).

——*Deed by—Onus of proof.*

judge of the Court and the delegates who are appointed to aid him in the adjudication of cases. The word "Court" is promiscuously used throughout the Act, but it cannot be read as including the delegates in all cases. Some confusion has crept into the Act by the use of the word "Court" promiscuously, but under the cleavage of functions under the Act, the word must be read in its context in order to determine whether it includes both

cannot be said to be a nullity. ... *v.* MEHERBAI. 174 I.C. 591=10 R B. 468=
40 Bom.L R. 50=A I.R. 1938 Bom. 195

——S. 39— *Jurisdiction— "Court" —Application* ... to hear—Judge alone or Judge ... tes. *See* PARSI MARRIAGE AND ... 2 (2) AND 39. 40 Bom.L.R. 50.

... *truction—Personal order for per- manent alimony—Re-marriage of wife—Effect—Recit- ation of order—If a matter of course—Discretion of*

... er for permanent alimony not secured ... the husband's property falls under Cl. ... Cl. (a) of sub-section (1) of S. 40 of the Parsi Marriage and Divorce Act. The Condition "while she remains chaste and unmarried" is inserted in

Cl. (*a*) and not Cl. (*b*). Therefore, though in the case of a secured alimony the order would cease to operate on the wife's remarriage, in the case of a personal order no such result would follow unless the order contains a provision that it is to cease to operate on her remarriage. It cannot be held that a re marriage is, by itself, a

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rescinded. That would depend on the circumstances of

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91—100.

PARTITION—*Abadi k* [illegible]
Partition of one of such [illegible]
can be divided among co-sharers of the mahal to be partitioned.

Where an application is made for the partition of a mahal holding abadi area jointly with other mahals, the

[illegible]

J. M.) BRIJ BASI RAI *v.* JHAGROO RAI.
1938 R.D. 327=1938 A.W.R. (B R.) 171.

——*Declaration of acquisition of under-proprietary rights, by Civil Court—Names not recorded in khewat—Right to separate patti.*

Where the Civil Court had declared that certain persons have acquired under-proprietary rights by adverse possession in certain plots, these under proprietors are entitled to have their under proprietary plots separated in a distinct patti. (*Darling, S. M. and Bomford, J. M.*) RAM BUX SINGH *v.* BALDEO SINGH.
1938 R D. 426=1938 A.W.R. (B.R.) 308.

——*Holding—Division—Considerations to be taken*

[illegible]

1938 A W.R. (B.R.) 205=1938 R D. 650 (2)

——*Parties to—If can challenge entries.*

Where the partition so far as the parties were con-

[illegible]

for payment of maintenance to widow—Execution before final decree—Permissibility.

Decrees may be partly preliminary and partly final. If in a partition suit a preliminary decree is passed providing for payment of a maintenance allowance to a widow who is a party to the suit, the decree so far as it relates to the payment of that allowance is quite final and can be executed by the widow, although no final decree has yet been passed in the suit. (*Zia-ul Hasan and Hamilton, JJ.*) SRI KRISHEN *v.* JAMNA NARAIN.
173 I.C. 980=10 R.O. 248=
1938 O.W.N. 348=1938 O A. 240=
1938 O L.R. 154=A I.R. 1938 Oudh 103.

——Procedure—Mahal held jointly with other mahals.
[illegible] HARERS—PARTITION.
1938 R.D. 243.

[illegible] *roceedings for—Lease during pendency of—*
—Duty of lambardar as to fair rent.

[illegible] ul to see [illegible] (*Bom-* [illegible] TOR OF [illegible] p.) 20=
1938 A.W.R. (B R.) 144=1938 R D. 285.

——*Refusal—Likelihood of formation of small pattis—If a valid reason.*

[illegible]

——*Suit for—Rules as to.*

The ordinary rule is that a suit for partition must embrace all joint properties owned by the parties thereto. But there is also the complementary rule that a suit for partition cannot include properties in which each of the parties does not claim an interest. (*Beckett J.*) RISAL SINGH *v.* CHANDGI. 40 P.L.R. 767.

PARTITION ACT (IV OF 1893), S. 4—*Applicability—"Undivided family"—Meaning of*

S. 4 of the Partition Act applies to all subjects of British India, whether Hindus, Mahomedans or Christians; the term "undivided family" means a family which is undivided in respect of the house or dwelling- [illegible] ich owns the house [illegible] *Lall, J.*) BABU [illegible]
88=10 R.P. 355=
.937 P.W.N. 902=
I.R. 1938 Pat. 13.

[illegible] *'ourt—Power to act*

[illegible] Partition Act means [illegible] ncludes an appellate Court; an appellate Court has therefore power to act under the section though no such application has been made in the trial Court. *An application may be made* [illegible] pellate Court, and [illegible] urt also is bound to [illegible] *var Lall, J.*) BABU [illegible]
88=10 R.P. 855=
937 P.W N.
I.R. 1938

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A "dwelling-house in S. 4 of t [illegible] not only the house itself but [illegible] and

PARTNERSHIP

tenances which are ordinarily and reasonably necessary for its enjoyment. The Court must therefore make a *valuation of such land and appurtenances also, if any.* (*Manohar Lall, J.*) BABU LALL TIWARI *v* HULLA MALLAH. 172 I C 835=4 B R. 168=10 R P. 355= 18 Pat L T. 866=1937 P.W N. 902= A I R 1938 Pat 13

PARTNERSHIP. *See also* (1) C. P. CODE, O. 30. (2) PARTNERSHIP ACT.

——*Advances by the partner to another for the*

The creditor partner is in no better position than the other ordinary creditors of the debtor pa not entitled to any priority over the (*Lord Romer*) NAND KISHORE *v.*

—*Suit for general accounts if necessary.*

If a partner makes an advance to the partnership on a promissory note, he can recover it from his partners without general accounts of the partnership being taken. It is not correct to say that no suit could lie on the note if the parties had partnership dealings. (*Weston*) KALU RAM *v.* BHOJ RAJ 1938 A M.L.J. 11.

——*Agreement of—If*

and admission of parties—

An agreement of partner

can arise out of a mutual

consistent course of conduct, and indeed, by the express admission of the parties concerned. (*Bose, J.*) HAJI ISA HAJI NOOR *v.* SARU BAI 177 I.C. 831= A.I.R 1938 Nag. 324.

change in the

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4 B R. 599= 1938 A L R 407=174 I.C. 875= (1938) 2 M.L.J. 966 (P C)

——*Death of a partner—Rights of representative—His remedy.*

When a partner dies, his representative has an interest in and a lien upon the partnership assets and can claim a taking of accounts as upon dissolution

PARTNERSHIP—Rights of partners inter se.

It is quite clear from a consideration of the history of partnership law that when one person conducts himself in matters relating to the partnership business so that it is not reasonably practicable for his partners to carry on business in partnership with him, the Court may dissolve the partnership and should, in doing so, fix the date on which that conduct has rendered it impossible for the relation of partnership to continue to subsist. (*Roberts, C. J. and Braund, J.*) MIYA BHAI *v.* MARIAN BEE BEE. A.I.R. 1938 Rang 478.

——*Dissolution—Right of partner to sue for his share of separate part of partnership assets.*

After dissolution, until the accounts of the partnership are completely settled, individual partners cannot sue for their share of any separate part of the partnership assets. *Such suit will lie if the partnership has been* completely wound up and the asset has become available to the partnership thereafter. (*Addison and Abdul Rashid, JJ.*) SONUN RAM MUKHI LAL CHAND *v.* SEWA RAM. 178 I.C. 53=A.I.R. 1938 Lah. 259.

——*Firm styled as factory—Partner's right in*

MISSIONER OF INCOME TAX. I.L R. 1938 All 638= 1938 A.W.R. (H C) 525=4 R A. 186= 177 I.C. 260=1938 A.L.R. 727=1938 A.L.J. 610= A I R. 1938 All. 452.

——*Hindu joint family a partner with strangers—Suit by a coparcener for his share on the basis of dissolution before suit—Denial of dissolution—Main-*

suit, but was denied by the other side.

Held, that such a suit could not be dismissed as being unsustainable without deciding the question as to whether the partnership was dissolved or not.

Held, further, that when family assets are in the hands of strangers any member of the family has a right to recover his share of the assets, and if it is necessary for such a purpose to take an account, such account has to be taken by the Court at the instance of the plaintiff. (*Pandrang Row and Venkataramana Rao, JJ*) SAMBASIVA IYER *v* NATESA IYER. 176 I.C 821=11 R M. 167 (2)=1938 M.W N. 22= A.I.R 1938 Mad 388=(1938) 1 M L J. 106.

——Interest—Right to—Advances by partner. *See* PRINCIPAL AND AGENT—SUIT FOR ACCOUNTS A I R. 1938 Mad. 38.

PARTNERSHIP—Suit against Partners.

only remedy between partners is one for partnership accounts. (*Lort Williams and Jack, JJ.*) GHISULAL GANESHILAL *v.* GUMBHIRMULL.

A.I.R. 1938 Cal. 377.

family business and also a partnership business. Where therefore the business carried on by certain persons, is a partnership business carried on by only some members of the joint Hindu family as partners, the other members of the family who are not interested in the business as partners cannot be made liable in respect of a loan borrowed for the partnership business, on the footing that the business is a joint Hindu family business. (*Mosely and Dunkley, JJ.*)
GOPIRAM.

before there can be a partnership in respect of a single

A.I.R. 1938 Nag. 550.

——Ss. 4, 5 and 6—*Association of men for business—Inference—Things necessary to constitute partnership.*

The person who actually conducts the business acts on behalf of all his associates, that is to say, on behalf of all who are joint proprietors with him. He does not act for his own separate and exclusive benefit. His intention is obviously to further the business as a whole for the benefit of all who own the concern. That is all that is necessary to constitute a partnership within the meaning of Ss. 4, 5 and 6 of the Partnership Act. (*Bose, J.*) HAJI ISA HAJI NOOR *v.* SARU BAI. 177 I.C 831 = A.I.R. 1938 Nag. 324.

PARTNERSHIP ACT (1894), S. 69.

——Ss 4 AND 5—*Joint Hindu trading family—Partition suit—Agreement to carry on business as before until final decree—Partnership, if can be inferred—Loan contracted by one branch of family—Liability*

I L R. (1938) 1 Cal. 369.

firm'—Firm started

ndu family firm can
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wrong. There is no
s the members of a
business out of joint
funds at any time, after the death of their father, or other ancestor. Such a firm is exempt from registration under S. 5 of the Partnership Act. (*Tek Chand, J.*) DEBI SAHAI *v.* GILLU MALL. 177 I.C. 918 = 40 P.L.R. 456 = A.I.R. 1938 Lah. 563.

——Ss. 32, 33 and 45—*Severance of partner—Absence of public notice—Liability of firm for the outgoing partner's transactions.*

a firm may have
s continue to be
partner made with
severance is given
hird party was aware of the
of the transaction. (*Misra, J.*)
PREM SHANKAR
1938 A W R (H C) 599 = 1938 A.L J 907 =
= A.I R. 1938 All. 619.

of accounts—Rights of

the account books of the
order to discover what
nership, the examination
barred out by the plain-
ing accounts as correct.
(*Beckett, J.*) RAM SUKH MAL *v.* HAR SAHAI MAL.
40 P.L.R. 753 = A.I.R. 1938 Lah. 758.

——S. 46—*Suit for accounts—Right of retiring*

have already inspected the accounts of the firm. (*Beckett, J.*) RAM SUKH MAL *v.* HAR SAHAI MAL, 40 P.L R. 753 = A.I.R. 1938 Lah. 758.

——S. 69—*Applicability—Contract of lease between partners—Partnership not registered—Suit by one against others for rent under lease—Maintainability.*

A suit by a person alleged to be a partner to recover the rent due to him by the other partner or partners under a contract of lease is barred and not maintainable if the partnership has not been registered, in vie

a right arising from a contract", within the meaning of S. 69 (3) of the Partnership Act The right of a creditor to file an insolvency petition against his debtor is a right conferred upon him by statute and is not a right arising out of a particular contract of loan between the petitioning creditor and the debtor. The fact that the creditor happens to be a firm and that a suit to recover

——S. 69—*Suit by firm—Pla.* *firm is registered—Neither defenda* *tion—Suit, if can be dismissed on* *tion was not proved.*

——Ss 69(2) and *sory note in favour of,* *on after Act—Firm not* ... *of suit—If saved by S. 74.*

On a promissory note executed to a firm on 12—8—1931, a suit was instituted on 23—8—1934, the plaintiff firm relying on a payment made towards the ... he suit ... artner- ... —1934. ... plead S. 69 (2) of the Partnership Act as a bar to the suit but they raised that objection a year later, *i.e*, in November 1935.

Held (by *Varadachariar, J.*, on a difference between *Pandrang Rao and Venkataramana Rao, JJ.*), (1) that the suit was maintainable and was not barred by S. 69 (2) of the Partnership Act; (2) that the object of S. 69 was to make sure that the general policy of the Legisla-

——S. 69 (2)—*Suit by unregistered firm—Subsequent registration and amendment of plaint—Effect of.*

A suit by an unregistered firm to enforce a right arising from a contract is barred by the provisions of S. 69 (2) of the Partnership Act. A subsequent amendment of the plaint after getting the firm registered cannot relate back to the date of institution so as to cure

... rms, and ... g in the ... Legisla- ... othing in

PASSING OFF. *See also* (1) TRADE MARK. (2) TRADE NAME.

——Action for—Passing off of books—Cause of action. *See* TRADE NAME—PASSING OFF. 42 C.W.N. 541.

PATENT—*Infringement—Suit for—Duty of defendant to give particulars as to whom he alleges to be true and first inventor.*

In an action for infringement of a patent, the defendant, who denies the case of the plaintiff as to the true and first inventor of the patent, must give particulars as to whom he alleges to be the true and first inventor. (*Blackwell, J.*) GILLETTE INDUSTRIES, LTD *v.* YESHWANT BROTHERS. 177 I.C. 103 = 11 R.B. 63 = 40 Bom L R. 478 = A.I.R. 1938 Bom. 347.

PATENT.

——*Novelty and utility of—Evidence of—Considerations in determining*

strongest kind that the prior knowledge did not in fact give an obvious clue to the solution and ought not to be considered as destroying "subject matter" Mere simplicity is not necessarily an objection, a mere

INDUSTRIES, LTD. *v.* YESHWANT BROTHERS. 177 I C. 103=11 R B. 63=40 Bom L R. 478=A.I.R 1938 Bom. 347.

PATENTS AND DESIGNS ACT (II OF 1911), S 53—*Infringement of—What constitutes.*

Designs Act must, in order to constitute offences under the Act, be committed in British India. (*Beaumont, C. J. and Wadia, J.*) CALICO PRINTERS ASSOCIATION *v.* MITSUBISHI SHOJI KAISHA, LTD. 177 I.C. 913=40 Bom.L R. 661=A I.R. 1938 Bom. 413.

PATNI SALE—*Terms of patni tenure—Duty of purchaser to enquire.*

It is the duty of the purchaser when he purchases the patni tenure at a sale to enquire as to the terms of the

If an offence punishable in British India

HAIDER *v.* SYED ISSA. 175 I C 615=39 Cr L J. 651=11 R N. 2=A.I.R. 1938 Nag. 235.

——S 28—*Deception—Meaning—Foisting counterfeited coins on another—Accused of 'counterfeiting' coins.*

The deception meant in S. 28 is with regard to the nature of the coins. It is deception through the resem-

PENAL CODE (1860), S. 34.

blance of the true coin with the false and it means that some one must be led to believe that the false coin is a

rfeited some coins

ouse with the sole

the counterfeiter

ccused cannot be

J.) SAHEBRAO

176 I C. 985=

1938 Nag. 444.

——S. 34—*Applicability—'Common intention'—What is—Common intention to cause grievous hurt but murder committed by one—Offence committed by others.*

S. 34, Penal Code, is not confined only to cases where

an offence under S. 325, I. P. Code. (*Zia-ul-Hasan and Yorke, JJ.*) RAJA RAM *v.* EMPEROR. 1938 O W.N. 1057=1938 O.A. 808=1938 A.W R. (C C.) 92 (2)=1938 O L R. 469=1938 A.Cr C. 127=178 I.C. 162=

caused. (*Blacker, J.*) MAHOMED NAWAZ *v.* EMPEROR. I L R. (1938) Lah. 603=176 I.C. 678=11 R.L. 226=39 Cr.L J 781=40 P.L R. 850=A.I.R. 1938 Lah. 543.

——S. 34—*Applicability sudden scuffle.*

Where there was a sudden scuffle between the accused and the other party and there was no consultation or premeditation amongst the accused, S. 34, I. P. Code, is not applicable to the case. (*Wazir, J.*) BARKAT ALI *v.* STATE. 40 P.L.R. J. & K. 37.

i Distinction

tween S. 34

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eral persons

i results in a

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liable as if that act were done by him alone S. 37

to commit that offence. (*Courtney Terrell, C.J. Dhavle and Chatterjee, JJ.*) EMPEROR *v.* ITWA MUNDA. 175 I C. 300=4 B.R. 39 Cr.L J. 554=10 R P 1938 P.W.N. 494=19 Pat A.I.R. 1938 Pa

——Ss. 34, 302 and 323—*Common intention—Fight ensuing on mutual exchange of abuse—Intention to commit murder—If can be inferred.*

Where the common intention of the party of the accused appears to have been merely to abuse and possibly to use fists on the opposite party for an alleged insulting behaviour on their part, and there was mutual exchange of abuse before the fight ensued, a common intention to commit a murder cannot be inferred, even though death

be convicted for any offence other than one under S. 323, I. P. Code. (*Young C. J. and Ram Lall, J.*) MIAN SINGH *v.* EMPEROR. **A.I.R. 1938 Lah. 747.**

——S. 39—*Applicability—Two men striking another with dangerous weapons and killing him—Offence.*

Dhavle, J.—Where two or more persons unite together and strike a series of blows, with dangerous weapons on the body of the deceased and it is impossible to identify any one of the wounds with any one of the assailants, nevertheless if the deceased dies as a result of the injuries received, each of the assailants is guilty of the offence of murder. The fact that one assailant committed the offence by yielding to the threats of other is no mitigation of the circumstances, because

Dhavle and Chatterjee, JJ.) EMPEROR *v.* ITWA MUNDA. **175 I.C. 300=4 B.R. 568=39 Cr.L.J. 554=10 B.P. 606=1938 P.W.N. 494=19 Pat.L.T. 476=A.I.R. 1938 Pat. 258 (S.B.).**

——S. 40—*Offence—Meaning—Breach of rule framed under local law.*

Where a local law declares a breach of the rules made under its authority to be punishable, then a breach of such rules might constitute an offence within the meaning of S. 40. (*Roberts, C.J. and Sfargo, J.*) BUX SOO MEAH *v.* EMPEROR. **178 I.C. 121=39 Cr.L.J. 985=A.I.R. 1938 Rang. 350.**

——S. 41—*Special law—Criminal Law Amendment Act, S. 7—Abetment of offence under—Conviction for—Sustainability.*

39 Cr.L.J. 985=A.I.R. 1938 Rang. 350.

——S. 71—*Conviction for offences under Ss. 323 and 452—Separate sentence—Legality.*

Where a person is convicted for the offences under S. 323 and S. 452 committed on one and the same occasion he can be sentenced separately for each offence. (*Mackney, J.*) TAN AUNG BA *v.* THE KING. **174 I.C. 952=39 Cr.L.J. 487=10 R.R. 454=A.I.R. 1938 Rang. 114.**

——S. 71—Different offences out of same act—Separate convictions and sentences—If justified. *See* WIRELESS TELEGRAPHY ACT, Ss. 3 AND 6. **1938 M.W.N. 823=(1938) 2 M.L.J. 281.**

——S. 75—*Previous convictions—Sentence—Considerations.*

More severe sentences than might normally be given may be given if there are previous convictions. But sentences ought to be inflicted with some regard to the nature of the offence, and also they must be tempered with humanity. (*Young, C. J. and Abdul Rashid, J.*) ALLAH DITTA *v.* EMPEROR. **40 P.L.R. 118.**

——S. 82—*Applicability—Offences under special or local law.*

S. 82, I. P. Code, is not confined to offences under the Code but extends also to offences under any special or local law, in the absence of special provisions to the contrary in such law. (*Baguley, J.*) THE KING *v.* BA BA SEIN. **1938 Rang L.R. 227=178 I.C. 508=A.I.R. 1938 Rang. 400.**

——S. 84—*Applicability—Accused shown by evidence to have been well aware of his acts—If entitled to exemption.*

When the evidence in a case clearly shows that an accused person knew quite well what he was doing, S. 84, I. P. Code, cannot apply. Where the accused person charged with the offence of the murder of his ... om the arms of his wife ... stabs her with the door ... not surrender until com... and where the accused further produces the weapons with which he has committed the murder, the case cannot be brought under S. 84, I. P. Code. (*Mockett and Horwill, JJ.*) SUBBAI GOUNDAN *v.* EMPEROR. **1937 M.W.N. 1329.**

——S. 86—Accused so intoxicated as to be unable to form intent to kill—Offence committed. *See* PENAL CODE, Ss. 302, 304 AND 86. **A.I.R. 1938 Rang. 219.**

——Ss 86 and 299—*Applicability—Accused getting drunk in the normal course of conduct—Intention to kill—If negatived—Knowledge of death being caused—Plea of drunkenness—If available as defence to charge of murder.*

Drinking might negative intention in appropriate cases, but will not negative knowledge. S. 299, I. P. ... nowledge that ... person who is ... ong and does it ... claim the benefit ... d to be so drunk ... ially in the case ... merely follows ... ing drunk, the ... efence, that he ... t he was doing. ... ention are to be ... e and the same thing under Ss. 86 and 299 ... *Horwill, JJ.*) SUBBAI GOUNDAN *v.* **1937 M.W.N. 1329.**

——S. 99—*Private defence—Right—Conditions and limits to exercise of—Charge of rioting and unlawful assembly—Plea of private defence—Sustainability.*

In considering whether the right of private defence exists and can be pleaded in defence to a charge of rioting and unlawful assembly the nature of the apprehended danger must be looked at and it has also to be seen whether there was time to have recourse to the police authorities, it has always to be borne in mind that whether both the parties are determined to fight

PENAL CODE (1860), S. 99.

and to go to the disputed land fully armed in full expectation of an armed conflict in order to have a trial of strength, the right of private defence disappears Where the object of the accused is not to prevent an aggression but to try out their strength by means of a pitched battle, there can be no room for the plea of right of private defence. There can be no right of private defence where the right is premeditated on both sides unless the object of the assembly is shown to have been to repel forcible and criminal aggression. If a man prefers to use force in order to protect his property when he can, for the protection of such property, easily have recourse to the public authorities, his use of force is made punishable by the Penal Code no matter what the intention of that person may be. (*Manohar Lal and Chatterji, JJ.*) SATNARAIN DAS v. EMPEROR.

17 Pat. 607 = 176 I C 710 = 4 B R. 763 = 11 R P. 103 = 39 Cr L.J. 785 = 1938 P.W.N. 593 = 19 Pat L.T. 501 = A.I.R. 1938 Pat 518.

——S. 99—*Resistance to public servant—Execution of warrant of arrest—Right of private defence—If exists—Cr. P. Code, S. 80.*

Where on the mere mention and showing of a warrant for arrest, resistance was immediately offered and the police-officers after overcoming such resistance showed and communicated the contents of the warrant of arrest.

—*Causing death of brother, if justified—*... *sudden provocation—If exists.*

Where the accused and a major woman married lived together by mutual consent, an... meeting them, the brother of the woman dragged her away from the company of the accused and whereupon

death.

Held, further, that the accused was being forcibly deprived of the company of a woman of mature years, who

39 Cr.L J. 339 = 10 R. Pesh. 64 = 173 I C. 698 = A.I.R. 1937 Pesh. 86.

PENAL CODE (1860), S. 109.

——S. 100—*Right of private defence—Deceased's party being aggressive.*

Where the deceased persons and their companions come armed with barchis and dangs and drunk and feeling that they have a grievance against the accused, they attack them causing an injury with a sharp edged weapon to one of them, the accused can be said to have reasonable apprehension that grievous hurt with deadly weapons would be caused to them so as to give them the right of private defence So also where it cannot be said that the reasonable apprehension of danger to the persons of the accused's party had ceased before injuries attributed to the accused were inflicted, it cannot be said that the right of private defence has been exceeded (*Tek Chand and Ram Lall, JJ.*) EMPEROR v UJAGAR SINGH. A I R 1938 Lah. 791.

——S. 100—*Right of private defence—Extent.*

A woman was being brutally beaten by her husband. She rushed out of her room and asked her brother who was sleeping near by to protect her. She was followed by her husband who said that he was going to continue the beating. He was a very brutal and dangerous man. The brother of the woman thereupon seized a hatchet and killed him. There was evidence that if he had not done so the deceased might have killed him.

Held, that under these circumstances the brother acted in the right of self defence not only of his sister

...on of ...others ...d and ...hours ...ect the ...than ...right ...ersons ...neces-

A.I.R. 1938 Lah. 60.

-Proof required.

...e offence of abet... ...tigated the person ...was an agreement ...(*Derbyshire, C.J.* ...BANERJI v. EMPEROR. 67 C.L J. 41.

——S. 108 A—*'Offence'—Meaning of—Abetment of child marriage outside British India—If punishable.*

...ledge of the accused to the notice of the authorit...

does not itself constitute abetment, unless the omission is an illegal omission, *i.e.*, involves a breach of a duty imposed by law, and not merely a breach of a departmental rule of conduct or discipline. A mere omission on the part of a clerk in a public office to bring to the notice of the higher authorities offences committed by other clerks in the same office cannot amount to abetment of those offences If he does nothing which facilitates the commission of the offences and if he is not ... held to ... loes not ... ır form ... ıt be by conduct. The question is one of fact. (*Pandrang Row, J.*) ANANTHACHARI *v.* EMPEROR.

A.I.R. 19[illegible]

——Ss. 109, 32[illegible] *intent give a beati*[illegible] *of them—Others i*[illegible]

Where several p[illegible] with the intention ... with lathis, but it is proved that as a result of the blow dealt by one of them the other died, though that person is guilty of murder, the others are only guilty of abetting an offence under S. 325, I. P Code, for though the act of murder was committed with their help, it could not be said that it was the probable consequence of the abatement on their part. (*Thomas, C*[illegible] *J.*) RAM DAMODAR *v.* EMPER[illegible]

178 I.C. 348 = ...
1938 A Cr C[illegible]
19[illegible]

——Ss. ... tion of spe[illegible] Ss. 222 (1[illegible]

——Ss. ... *found in temple in middle of night with house-breaking implements and deadly weapons—Offence—Inference.*

Where it was proved that the accused, four in number, and another person were found together in the precincts of a temple in the middle of the night with house-breaking implements and aruvals and a gun,

Held, (1) that it followed that the ... conviction under S. 143, I. P. Code, ... have been there with a common obje[illegible] kind; (2) that it did not, however, [illegible] support a conviction under S 120-B, I[illegible] *J.*) PUBLIC PROSECUTOR *v.* PICHA[illegible]

177 I.C. 545 = 11 R M. 344 = [illegible] =
1938 M W.N. 593 = 48 L W 146 =
A I.R ...

——S. 120 B—*Applicability—Con*[illegible] *cate false evidence.*

As there is no express provision for the punishment of conspiracy to fabricate false evidence, S 120 B applies to such offence. (*Gruer, J.*) SAHEBRAO AWADHUT *v.* EMPEROR.

176 I.C. 985 = 11 R N. 102 = 39 Cr L J. 838 =
A I.R. 1938 Nag 444.

——S. 120-B—*Charge of conspiracy to commit an offence—Offence carried out—Trial on charge of conspiracy—Legality.*

It is legal to try accused persons on a charge of conspiracy to commit an offence even if the substantive offence has been carried out. (*Pollock and Gruer, JJ.*) SURAJPAL SINGH *v.* EMPEROR.

I.L.R. (1938) Nag 516 = 176 I C 853 = 11 R N. 81 =
39 Cr L.J. 818 = 1938 N.L J. 185 =
A I R. 1938 Nag 328.

——S. 120-B—*Charge for conspiracy—Known overt act amounting to an offence—Proper procedure.*

Per *Biswas, J.*—Where proof of the conspiracy is sought to be rested on proof of participation in an overt act which itself amounts to an offence, the proper course is to put the accused on trial for that offence. It is not right in such a case to charge conspiracy on the off chance of being able to secure a conviction for the overt act. (*McNair and Biswas, JJ.*) GOLOKE BEHARY TAKAL *v.* EMPEROR. I L R. (1938) 1 Cal. 290 =
173 I.C. 65 = 39 Cr L J. 161 = 10 R C. 441 =
42 C.W.N. 129 = 66 C.L J. 225 =
A.I.R. 1938 Cal 51.

——Ss 120 B, 302 and 201—*Charge under S. 120-B read with Ss. 302 and 201—Single conspiracy charged* ...

mit both an offence under S. 302 and an offence under S. 201, the prosecution must stand or fall according as they can or cannot establish the conspiracy as charged. A conspiracy to commit a particular offence or offences having been charged, it would not be open to the prosecution to prove a different conspiracy. Nor could the ... for a conviction for ... ed to constitute the ... minor offence. To ... ıardly applies, for it ... e evidence falls far ...

66 C.L J. 225 = A.I R 1938 Cal. 51.

——S. 120 B—*Propriety of a charge under—Numerous instances of misappropriation*

Where the accused were in fact charged with specific offences and over and above these, there was a charge of ...

——S 124 A—*Article censuring policy of Ministry* ...

seditious and does not fall within the mischief of S. 124-A, I. P Code. (*Bartley and Khundkar, JJ.*) DHIRENDRA NATH SEN *v* EMPEROR.

178 I C. 536 = 42 C W N. 1150 =
A.I R 1938 Cal 721.

——S. 124 A — *Government established by law—Ministry of a Province—Exciting disaffection towards them—If offence—Government of India Act, Ss 49 and 50*

Obiter.—The expression "Government established by law in British India" in S. 124-A, I. P. Code, denotes the person or persons authorised by law to administer executive Government in any part of British India. There is no specific provision in the Government of India Act vesting the Ministry of a Province with

PENAL CODE (1860), S 124 A.

executive functions. On the other hand, such functions should under S. 49 of that Act "be exercised by the Governor either directly or through officers subordinate to him." It is diff... to maintain the position that a Ministry chosen ... people, and emp... dictate the policy ... real sense a body c... It would follow, ... persons authorise ... Government and at ... them would not be an offence under S. ... Code. (*Bartley and Khundkar, JJ.*) DHIRENDRA NATH SEN v. EMPEROR. 178 I C 536= 42 C.W.N. 1150=A.I.R. 1938 Cal. 721.

———S. 124-A—*"Government"—Meaning of—Attack on magistracy and police.*

"The Government" in S. 124 A, I. P. ... much more than the Ministers, and includes ... nery with which the Ministers have ... attempt to bring into hatred and contempt ... tracy and police is an offence under S. 124 ... *J.*) BATLIWALLA v. EMPEROR. 177 I C 747= 39 Cr L J 938=(1938) M.W.N 529=48 L.W. 170= A.I R 1938 Mad. 758=(1938) 2 M.L.J. 416.

———S. 124 A—*Offence—Test—Political views—If relevant—Dissatisfaction with Government—If offence.*

The fact that the opinions expressed in a speech are in accordance with the principles of the political party in power at the time cannot take the case out of S. 124 A, I. P. Code. A Court clearly cannot take account of the principles of a political party and declare that an offence punishable under the Code is not an offence because it does not contravene the principles of that party. It is not the advocacy of cer... they may be—that the ... methods and modes of ... affection towards the G... to bring that Govern...

bearers to join the ... in itself seditious within the meaning of S. 124 A. (*Blacker, J*) PINDI DAS v EMPEROR. 177 I C 707=11 R L 357=40 P L R 872= 39 Cr L J. 930=A I.R. 1938 Lah. 629.

———S 124 A—*Scope—Offence—Criticism of Government—If punishable—Intention.*

S. 124 A, I P Code, is intended as much to protect the people against agitators as it is to maintain the stability of the Government. Fair criticism of the Government is no offence; but the question the Court has to decide in a prosecution under the section is whether the speech of the accused on which the charge ... dicates an intention to promote hostility ...

... couraged which may lead to a conflict with the authorities, with the certainty that there will be grievous loss of

PENAL CODE (1860), S 147

life. (*Horwill, J*) BATLIWALLA v. EMPEROR 177 I.C. 747=39 C L J. 938=1938 M W N. 529= 48 L W. 170=A.I R 1938 Mad 758= (1938) 2 M L J 416.

... *prosecution.*

An assembly which is lawful may at any time become an unlawful assembly. But this has to be proved. Though common intention may be a matter which can only be inferred from circumstances, yet it is not enough ...

... *body to drive trespassing cattle to the pound—Armed with sticks in anticipation of interference.*

Where the villagers went in a body to a place where the trespassing cattle were, in order to drive them to the pound, their common intention would not be an intention which would make their assembly unlawful within the meaning of Cl. (4) of S. 141, I. P. Code. Nor would the assembly be unlawful merely because they took sticks and axes, anticipating interference. The assembly would be unlawful if there had been a common intention to remove the cattle by force from the possession of persons in charge of them. (*Weston.*) SANGA v ... A.M L J. 128.

... ccused found ... ly weapons and ... *See* PENAL ... 38 M.W.N. 593.

of an unlawful assembly and resisting the process of law are two separate offences, though they may be committed in the course of the same transaction. (*Mahomed Noor and Rowland, JJ.*) SHEO AHIR v. EMPEROR. 178 I C. 487=5 B R. 104= 1938 P.W N. 813=19 Pat L.T 665= A.I R 1938 Pat. 548.

———Ss. 147 and 158—*Charge under—Dispute as to possession of land—Question of title—If can be gone into.*

In cases of rioting and unlawful assembly arising out of disputes as to possession of land, it is open to the Court to go into the question of title incidentally in ... believe the evidence of ... f the parties was really ... or whether a party was making out a pretence to engage in a pitched battl... (*Manohar Lall and Chatterji, JJ.*) SATNARAIN

PENAL CODE (1860), S. 147.

v. EMPEROR. 17 Pat. 607=176 I C. 740= 4 B R. 763=11 R.P. 103=39 Cr L J. 785= 1938 P.W.N. 593=19 Pat L.T. 504= A.I R. 1938 Pat. 518.

——S. 147— *Conviction under — Sustainability— Charge against seven persons—Acquittal of four—Conviction of other three—Legality.*

In the absence of evidence to than five persons took part in th

J.) GOPALAKRISHNA *v.* EMPEROR 176 I.C. 40=11 R M. 27=39 Cr L J. 687 (1)= 1938 M.W.N. 224 (1)=47 L W 323= A.I R. 1938 Mad. 392.

——Ss. 147 and 148—*Rioting—Three out of four found not guilty—Fourth, if can be held guilty.*

Where the evidence against all the four accused is precisely similar and three of them are found not guilty of the offence of rioting, the fourth cannot be found guilty of rioting with a deadly weapon. (*Cunliffe and Henderson, JJ*) EMPEROR *v.* TUKKU. 67 C.L J. 217.

affray—Sustainability.

One of the ingredients of the offence of affray is fighting by two or more persons. Fighting connotes

attempt to retaliate, the offence of affray cannot be said to be committed because there is no fight in such a case, though there may be assault. A conviction under S.160, I.P. Code, in such a case is unsustainable. (*Pandrang Row, J.*) RAMI REDDI *v.* NARASI REDDI. 178 I.C 523=1938 M W.N. 975=

of release to the sureties, as it happened to be a holiday, and where a Sub-Inspector fails to comply with such order on the ground that the order should have been communicated to him only through Superintendent of police, he is guilty of offences under Ss 166 and 342, I P. Code. The Cr. P Code gives Magistrates the authority to order release on bail and the Sub Inspector cannot refuse to carry it out. (*Bennet, J.*) MOHAMMAD YAKUB *v.* EMPEROR. 1938 A L J. 782= 177 I.C. 867=1938 A.Cr.C. 79=1938 A.L R. 794= 11 R A. 285=39 Cr L J 974= 1938 A.W.R. (H C.) 471=A.I.R 1938 All. 534.

——S. 171-B—*Offence under—Candidate for election offering rival candidate money for withdrawal of his candidature.*

Where the accused, a candidate for an election, directs his agent to dissuade a rival candidate from standing for the election, by offering him money and the latter accordingly offers a large sum of money to the rival candidate provided he withdraws his candidature, the conduct of the accused comes within the definition of 'bribery' contained in S. 171 B. (*Henderson, J.*) AHMED KABIR CHOWDHURY *v.* EMPEROR.

PENAL CODE (1860), S. 187.

174 I.C. 808=39 Cr.L J. 483=10 R C. 725= A.I.R. 1938 Cal. 274.

——S. 182—*Naraji petition against report of officer —Enquiry into—Duty of Magistrate before prosecuting petitioner.*

Where a naraji petition is submitted to a Magistrate

PALIT. 67 C L J. 583.

S. 184, Penal Code, deals only with the obstruction of a proceeding conducted by lawful authority and a proceeding can be obstructed by measures other than physical methods. Where as the result of the abusive language used by the accused against the bidders and the officer conducting the sale, further bids were not forthcoming and the sale had to be postponed, the sale of the property is obstructed and the accused are guilty under S. 184, Penal Code. The obstruction to be an offence under this section, need not be physical (*Grille*

——Ss. 184 and 186—*Distinction between—Difference in nature of obstruction.*

A.I.R. 1938 Nag. 529.

——S. 186—*Obstruction—Threats, when can amount to.*

The word 'obstruction' in S. 186 of the Penal Code is not confined to physical obstruction only. Threats of violence made in such a way as to prevent the public servant from carrying out his duty might easily amount to an obstruction of the public servant. (*Bennet, J*) EMPEROR *v.* NANHUA. 173 I C. 732= 39 Cr L J. 363 (1)=10 R.A. 507=1938 A Cr.C. 3= 1938 A.L R 173=1937 A.W R 1179= 1937 A.L J. 1344=A.I.R. 1938 All. 118.

——S. 186—Offence—Officer entrusted with warrant of attachment by Panchayat Board—Obstruction to—Offence—Existence of legal warrant—If condition precedent *See* PENAL CODE, S. 353 1938 M.W.N. 418.

——S. 187—*Offence—Person attending and witnessing search without written order—Refusal to sign search list—If offence—Cr. P. Code, Ss.* 103 (1) *and* (5) *—Signing of search-list—If part of duty to attend or witness search*

Refusal to attend and witness a search when called upon to do so by an order in writing is an offence under S. 187, I. P Code, as laid down in S. 103 (5), Cr. P. Code, as amended in 1923. But a refusal to sign the search-list by a witness to search who attends the search, though he has received no order in writing, cannot by itself be deemed to be an offence under S. 187, I. P. Code.

Per *Varma and Manohar Lal, JJ.*—Penal laws must be strictly construed. The Legislature has deliberately omitted to make penal the refusal to sign the search-list, and there is nothing in S. 103, Cr. P. Code,

to compel the person witnessing the search to sign the search list also Refusing to sign the search list is not refusing to assist the public servant in the discharge of his public duties as contemplated by S. 187, I. P. Code.

Per *Chatterji, J.*—Persons who have become bound by an order in writing signed by the officer concerned under the last part of S. 103 (1), Cr P. Code, to become search witnesses, are also under the obligation to sign the search list that may be prepared, and if they [illegible] they are guilty of refusing to render

[illegible]

sary.

For the purpose of proving an offence under S. 193 of the Penal Code, it is sufficient, if [illegible] false evidence was intentionally gi[illegible] person knowing the statements [illegible] advisedly and with the intent of de[illegible] is not necessary in such a case t[illegible] should always be concerning a qu[illegible] decision of the case before the Court in which the false evidence is given. (*Guha and Lethbridge, JJ*) JUGAL CHANDRA DALAL *v.* EMPEROR. 42 C.W N. 31.

——S. 193—*Onus of proof.*

[illegible]

ment or with a dealing intended to be kept secret it

amounts to an offence under S. 204 (*Davis, J C and Mehta, J*) TAKHTRAM TULSIDAS *v.* EMPEROR 178 I C. 361 = A I.R 1938 Sind 217.

——S. 206—*Applicability—Judgment debtor harvesting attached crops—Absence of fraudulent intent—Judgment debtor not aware of attachment and harvesting to save crops from destruction—Offence.*

A judgment-debtor who merely harvests his crops which happen to have been attached cannot be held to be guilty under S. 206, I P. Code, unless it is shown [illegible]

[illegible]

The second part of S. 211 must be read with the first [illegible] fers to [illegible] riminal [illegible] to in [illegible] much [illegible] n first [illegible] ie police under S. 154, Cr. P. Code, as when a complaint is made direct to a Magistrate under S. 200. (*Davis, J.C. and Mehta, J*) DHARAMDAS HIRANAND *v.* EMPEROR. 178 I C 218 = A I.R. 1938 Sind 213.

[illegible]

the first class, and a sentence of fine by him is a

PENAL CODE (1860), S. 212.

sentence. (*Baguley, J.*) THE KING *v.* MA BAN GYI. 1938 Rang.L.R. 236=A.I.R 1938 Rang. 397.

——S. 212—*Applicability—Domes found to be con-*

there, and he gave no answer. The defence was that it was the petitioner himself that had arrested the three Domes. It was also in evidence that a dacoity had been committed in the neighbourhood, and that in connection with this dacoity not only were processes under Ss. 87 and 88, Cr. P. Code, taken out and served against the three Domes, but proclamations by beat of drum were made. But the proclamations neither named these particular Domes as the offenders nor specified the particular dacoity of which evidence had been given in the case as

it was he himself that had arrested the Domes, was insufficient to warrant his conviction on the footing that he had concealed persons whom he knew or had reason to believe to be "the offenders" in relation to the particular dacoity in question. (*Davle, J.*) SHIVAREKHA PANDE *v.* EMPEROR. 176-

1938 P.W.N. 468=19 P.

4 B.R.

——S. 215—*Applicabili*

dient to be established by prosecution—Burden of proof of attempt at apprehension of offender.

The words "unless the accused uses all ... power to cause the offender to be apprehende ... ted of the offence," in S. 215, I. P. Code, ... interpreted as making failure to use means ... apprehension of the offender as one of th... of the offence which it is necessary for th... to establish in order to obtain a conviction. ... clause is in the nature of an exception, ... elements of the offence under S. 215 have been established by evidence, the onus of proving that the accused ...

Rowland, JJ.) RAMANAND TELI *v.* EMPEROR.

177 I C 344=19 Pat L T. 776=4 B.R 818= 39 Cr L J. 887=

——S. 215—'*De*... *to who the offender endeavours—Onus.*

PENAL CODE (1860), S. 225 B.

To 'deprive' a person of any article, may be either to take it away from him or to prevent him from getting possession of it, if he would have done so in the normal

1938 A.L.R. 675=39 Cr L J. 808= 1938 A Cr C. 43=1938 A.L.J 531= 1938 A.W.R (H.C.) 362=11 R A. 145= A.I.R. 1938 All. 440.

——S. 216—*Offence under—Proof required.*

The mere fact that an absconder is found in the house of another person is not sufficient to involve the owner of the house in an offence under S. 216, I. P. Code, unless all other elements of the offence are established. Among other things, it is the duty of the pro... ove the knowledge of the accused person as ... hat section, and here too the fact that a ... had been made some time before the ... conclusive evidence of the knowledge of the ... ender. (*Din Mohammad, J.*) MOOLA *v.* EMPEROR. 40 P L.R. 934.

——Ss. 218 and 219—*Applicability—Charge against Village Munsif of making false entry in suit register—Entry as to fictitious suit and fictitious judgment therein—Offence.*

of suits filed in his Court, framed that register in a manner which he knew to be incorrect, namely, by

39 Cr.L J 875=11 R M. 327=1938 M W.N. 345= A.I.R. 1938 Mad. 595=(1938) 1 M.L J. 876

... *arrest* ... *y Judge* ... *ation by* ... *time of* ... *Warrant*

—If legal—Escape by arrested person from custody—

... rver of the ... of arrest ... The order for arrest was passed by the Munsif and the warrant

PENAL CODE (1860), S. 228.

was signed by the head clerk in pursuance of a general order passed by the predecessor in-office of the Munsif who ordered the arrest. The respondent signed the warrant of arrest but did not go with the process server and then absconded.

Held, that the accused was guilty of an offence under S. 225 B, and the fact that the warrant was signed by the head clerk or that there was no order by the succeeding Munsif authorizing the head clerk to sign arrest warrants did not make the warrant illegal. The order of delegation was made by the Court and was in force until withdrawn. (*Burn, J.*) PUBLIC PROSECUTOR *v.* ABDUL RAJAK. 176 I C. 138=11 R M. 31=33 Cr.L.J. 685=1938 M W.N. 316=47 L.W. 536=A I.R. 1938 Mad. 536=(1938) 1 M L J 667.

——S. 228—Debt Conciliation Board—Power to punish for contempt. *See* CR. P. CODE, S 480. 40 P L.R. 218

——S. 235—*Offence under—Facts to be proved to sustain the charge.*

An offence under S. 235 of the Penal
made out unless the prosecution proves
possession of the instrument or material
such a possession was with the intentio
same for the purpose of counterfeiting co
knowledge and belief that it was intend-
for the purpose. If the prosecution fails to prove the necessary *mens rea*, a person cannot be convicted under the section by a mere proof of physical possession of an instrument or material. (*Venkataramana Rao, J.*) MORSAN *v.* EMPEROR. 173 I.C. 394=10 R.M. 578=39 Cr L J. 344=1938 M.W.N. 89=47 L W. 173=A.I.R. 1938 Mad. 393=(1938) 1 M.L.J. 482.

——Ss. 279 and 114—*Abetment of offence—Proof required.*

To establish the abetment of an offence under S. 279, it is not sufficient to show that the
have instigated the driver to driv-
shown at least that he instigated hi
which was in itself, in all the circu
fast as to endanger human life
common sense view, it seems unlikely that a passenger in a car would explicitly tell any person to drive in a manner which is dangerous. The mere fact that the owner or an occupant did not insist on the driver driving at a moderate pace, does not show that he instigated his driving at a reckless pace (*Mackney, J*) MAUNG TUN KHIN *v.* THE KING 175 I C 133=10 R R 462=39 Cr.L J. 535=A I R 1938 Rang 97.

——S 279—*Negligence—Collision in road crossing*

the car not knowing that a vehicle was approaching, nevertheless approached the crossing at a reasonable speed, the accident was held to be solely due to the Ekka driver neglecting the elementary precautions. (*Bennet, J*) W K WESLEY *v* EMPEROR 178 I C 183=1938 A Cr C 90=1938 A L R. 827=1938 A W R (H C.) 505==A I R 1938 All 571.

——S 279—Offence under, and offence under S 5 of Motor Vehicles Act—Distinction between *See* MOTOR VEHICLES ACT, S 5. A I R 1938 Rang 161

——S 279—*Rash and negligent driving—Meaning of.*

Under S 279 the rashness or negligence shown must be what may fairly be described as criminal rashness or criminal negligence. There must be something more than mere error of judgment or mere carelessness. A tram-

PENAL CODE (1860), S. 299.

driver when running his car on the lines is entitled to expect that if other vehicles are on the lines, they will give passage to him, and will not obstruct his ordinary progress. Where therefore a tram driver is driving his car at a fast but not at excessive speed and a camel cart or a bullock cart running parallel to it in the same direction suddenly swerves to the wrong side and collides with the tram car, the tram-driver cannot be said to be rash or negligent within the maning of S 279 merely because he does not anticipate that the other vehicle would suddenly swerve to the wrong side instead of to the right side. (*Davis, J. C. and Hatelwala, J.*) ABDUL GHANI *v.* EMPEROR 175 I.C. 27=10 R S. 272=39 Cr L J. 515=A I R. 1938 Sind 86.

——S 294-A—*Chit fund amounting to lottery—Person conducting—Liability to conviction—Government requiring conductor to wind up and repay subscriptions within certain time—If can be pleaded in defence as*

that date and cannot be pleaded in defence to a charge under the section. (*Horwill, J*) PUBLIC PROSECUTOR *v.* SOOSAI PILLAI. 177 I.C. 640=11 R.M 363=39 Cr L J. 916=1938 M.W N. 431=47 L W. 573=A.I R 1938 Mad 715=(1938) 1 M L J. 724.

——Ss. 299 and 300—*Construction and scope—Murder and culpable homicide—Distinction—Test to decide—Intention of accused—Material time to ascertain—Accused cutting old, and defenceless woman on head savagely and killing her—Offence—Penal Code,*

must turn to the words of the law themselves. If the killing comes within any of the four clauses of S. 300, I P Code, the offence is, exceptions apart, murder The third clause to S 300 refers to a bodily injury *sufficient* in the ordinary course of nature to cause death, and S 299, I P Code, refers to bodily injury *likely* to cause death. It is on account of the use of the word "*sufficient*" in S 300, thirdly and "*likely*" in S 299 that much of the difficulty in the interpretation of these sections
fully S 300,
dinary gram-
s. If on re-
killing does
than he can
refer to S. 299 If the killing comes within the second part of S 299, namely, that relating to the intention of causing a bodily injury likely to cause death, then it comes under S 304, Part I, and if there is no intention, but only knowledge, that is to say, if there is no intention to cause death or a bodily injury likely to cause death, but only knowledge that death is likely to be caused, the offence falls under S. 304, Part II. A reference to S 304, I P Code, will show that in Part I, there is intention, while in Part II, intention is expressly excluded, and the latter part of S 304 deals with only knowledge. Cases under the Exceptions to S. 300, I.P. Code, fall under S 304, Part I The words of S 300 are plain and it is the duty of judges to read them carefully and intelligently. Where the accused cut a defenceless old woman savagely on the head with

PENAL CODE (1860), S. 299.

and kill her, the offence is murder and the conviction should be under S. 302, I.P. Code, and not S. 304, for culpable homicide. The intention to be looked at is the intention at the time that the accused strikes the victim, and not at the time when he leaves his house for the purpose he has on hand. The latter is not the material time. A man's intentions are to be judged by his acts in relation to the surrounding circumstances.

Lobo, J.—The test to be applied in any particular case of culpable homicide, apart from the exceptions to S. 300, I.P. Code, is whether the intention specified in Cl. 1 or 3 of S. 300, I.P. ·
evidence and circumstances.
murder; if it is not, the offe
(*Davis, J.C. and Lobo, J.*) HAJI KHUDU *v.* EMPEROR
32 S L R. 18.

——S. 299—Intention — Knowledge — Murder—Drunkenness—When available, as defence—Person generally in the habit of drinking—Killing by—Offence. *See* PENAL CODE, SS. 86 AND 299.
1937 M.W.N. 1329.

——Ss. 299 and 300—*Offence of murder—Intention to kill—If necessary.*

It is not only an intention to kill tha
offence of murder or of culpable homici
does an act with the knowledge that his
cause death or such bodily injury as
death, he can be guilty of culpable hon
murder in that case also. (*Zia ul-Hasan, J.*) DILDAR KHAN *v.* EMPEROR. 173 I C. 339 = 1938 O.A. 154 = 1938 A Cr C. 11 = 1938 O.L R. 108 = 1931 O.W.N. 184 = 10 R.O 220 = 39 Cr L J. 330 = A.I.R. 1938 Oudh 88.

——Ss 300, 302 and 326—*Applicability—Stabbing on the left forearm—Radial artery pierced and death caused by haemorrhage—Offence.*

forearm. The radial artery was pierced and the deceased died of haemorrhage soon after.

Held, that accused was not guilty of murder or even culpable homicide not amounting
only guilty of voluntarily causing
S. 326, I. P. Code, as the hurt w
accused must have known that by
was likely to cause grievous hurt. (*Lakshmana Rao, J.*) KOTTENGODAN ALAVI *v.* EMPEROR.
1938 M.W N. 1274.

——S. 300—*Murder — Injuries inflicted very serious and several in number.*

Where the injuries inflicted by the accused on the deceased were of a very serious nature and several in number, one wound cutting the neck and severing the fourth cervical vertebra, another wound cutting the skull and exposing part of the surface of the brain, etc.

Held, that the accused had intended to kill the deceased and that they were guilty of murder. (*Roberts, C. J. and Spargo, J.*) TUN KHINE *v* EMPEROR.
178 I.C 298 = A I.R. 1938 Rang. 331.

——S. 300, Secondly and Fourthly—*Murder—Blow on head with heavy pestle—Offence.*

A person who strikes a heavy blow on the head of another with a heavy pestle must be deemed to intend to cause such bodily injury as is likely to cause death. Though the accused may have no premeditation, the act of striking a man on the head with such a heavy

PENAL CODE (1860), S. 300.

weapon as a pestle is one which is so imminently dangerous that in all probability it must cause death. The accused in such a case is guilty of murder. (*Burn and Lakshmana Rao, JJ.*) CHINNA PITCHAI VADU *v.* EMPEROR. 177 I C. 944 = 39 Cr L J. 979 = 48 L.W. 415 = 1938 M.W.N. 871 (1).

——S. 300 (2)—*Scope.*

Where it has not been shown that any constitutional or other peculiarity existed in the case of the deceased which would have made it likely that injuries which ordinarily would not cause death, would be fatal in his
that his assailants
S. 300(secondly)
(*Tek Chand and Ram Lall, JJ.*) WARYAM SHER MOHAMMAD *v.* EMPEROR. A.I.R. 1938 Lah. 834.

——S. 300, thirdly, and Excep. 4—*Applicability—Blow on head causing fissured fracture of—Death ensuing—Clot of blood found on brain underneath skull—No fight—Offence.*

The accused struck the deceased on the head with a bamboo stick about 5 feet long and about 1⅞ inches in
l down,
low; the
beaten
ld him
struck
strike
the head; but it was found that the first blow was dealt with sufficient force to produce a fissured fracture of the skull, and the medical examination revealed that a clot of blood was found present on the brain underneath the skull.

Held, that it must be inferred that the accused intended to cause such bodily injury as is sufficient in the ordinary course of nature to cause death, and the case fell under S. 300, thirdly, and the accused was liable to

——S 300 (3)—*Scope—Number of serious injuries—Cumulative effect being death.*

less than 28 injuries.
nds on the legs and
had been fractured at
had been dislocated,
upper jaw was missing. There were also two contused wounds skin-deep on the head, and contusions on other parts of the body. It may be that none of these injuries individually was sufficient to cause death, but death was due to the cumulative effect of the multiple injuries. On these facts,

Held, that the accused assaulted the victim with the intention of causing such bodily injuries as were sufficient, in the ordinary course of nature, to cause death. Their case, therefore, clearly fell within clause *thirdly* of S 300. (*Tek Chand and Ram Lall, JJ.*) WARYAM SHER MOHAMMAD *v.* EMPEROR.
A.I.R. 1938 Lah. 834.

—— Ss. 300, Excep. 1 and 304—Brother dragging away sister from company of accused—Accused killing brother—Offence. *See* PENAL CODE, Ss. 100 AND 300, EXC. 1. 173 I C. 698.

—— Ss. 300, Excep. 1 and 302—*Conditions necessary for application of Exception—Interval of time between provocation and the killing—Effect.*

PENAL CODE (1860), S. 300.

For the Excep. 1 to S. 300, I. P. Code, to apply, the accused must be deprived of the power of self control

I.L.R. (1938) All. 789 = 1938 A.W.R. (H.C.) 473 = 1938 A Cr C. 62 = 177 I C. 821 = 1938 A.L.R. 790 = 11 R.A. 227 = 39 Cr.L J. 956 (2) = 1938 A.L J 689 = A I.R. 1938 A. 532

——**S. 300, Excep. (1)**—*Grave and sudden provocation—Provocation given to accused by a poster of which he had knowledge for two days—If amounts to.*

Where the accused stabbed the deceased owing to provocation caused by a certain poster of which he had knowledge for at least two days, the provocation cannot be said to be sudden, and the accused is guilty of murder under S. 302, I. P Code (*Young, C.J. and Abdul Rashid, J*) AZIZ AHMAD *v.* EMPEROR

176 I.C. 89 = 39 Cr L J. 695 = 11 R.L 161 = 40 P.L.R 119 = A I.R. 1938 Lah 355

——**Ss 300, Excep. 2 and 302**—*Private defence—Accused provoking quarrel—Plea, if available.*

Where an accused began quarrel by acting in an improper manner towards the deceased's wife, and when he was asked by the deceased and the deceased's wife to leave the scene peacefully he declined to do so, whereupon a fight ensued in which the accused killed the deceased

Held, he could never plead the right of private defence. (*Roberts, C.J. and Dunkley, J*) THE KING *v.* NGA PU GYI. 178 I.C. 413 = A.I.R. 1938 Rang. 441.

——**S. 300, Excep 4**—*Applicability—Accused using weapon against unarmed person in sudden fight.*

The using of a weapon by one person against an unarmed person in a sudden fight is not within the limits of Excep. 4 to S 300 because it is expressly provided that no unfair or undue advantage must be taken by one of the combatants if the plea of sudden fight is to be raised by way of exception. (*Roberts, C J. and Sharpe, J*) SYED AHMED *v* EMPEROR.

173 I C. 299 = 10 R.R 335 = 39 Cr L J 300 = A I R. 1938 Rang 15

——**S 300, Excep 4**—*Applicability—Fight ensuing upon a sudden quarrel—Stabbing in the heat of passion—Proper sentence*

Where it is clear that the accused stabbed the deceased in the heat of passion in a fight ...

one of transportation for life. (*Burn and Mockett, JJ.*) RAHIMAN KHAN SAHIB *v* EMPEROR

1938 M.W N 31 = 47 L W. 149 = A I.R. 1938 Mad 403.

——**Ss. 302 and 304**—*Accused striking deceased one blow with stick on his head under provocation—Offence committed.*

PENAL CODE (1860), S. 302.

Where the accused struck only one blow with a stick on the head of the deceased in a sudden passion

A.I.R 1938 Sind 63.

——**S. 309**—Applicability—Stabbing a man with knife on forearm—Death caused by haemorrhage—Offence. *See* PENAL CODE, SS. 300, 302 AND 326.

1938 M.W N 1274

——**S. 302**—*Concerted attack—Doubt as to who caused death—Sentence.*

When once the guilt of murder is proved the proper penalty to be passed is a matter for the discretion of the Judge and it is by no means true to say that merely because there is a doubt as to which of the several of the attackers inflicted the fatal blow this is sufficient ground for withholding the death sentence in the case of any or all of them. But a person who has even wrongly got the benefit of a lenient sentence at his trial, may sometimes be allowed to benefit by his good fortune, provided the sentence passed is one which is legal. (*Roberts, C. J. and Spargo, J.*) TUN KHINE U *v.* EMPEROR.

178 I C 298 = A I.R. 1938 Rang. 331

——**S. 302**—*Evidence—Benefit of doubt*

Where the prosecution evidence is of a partisan character and there is a doubt regarding the very presence of some of the prosecution witnesses at the spot and further though they say that cutting and penetrating weapons were carried by the accused, no such injury is found on the complainants, there is sufficient amount of doubt in the case and the accused must be given the benefit of that doubt. (*Tek Chand and Ram Lal, JJ*) AHMAN *v.* EMPEROR. 40 P L R 697 = A.I.R. 1938 Lah 787.

——**S 302**—*Evidence—Death capable of explanation on hypothesis of murder as well as of accident—Absconding of accused—Benefit of doubt*

If death can be explained on the hypothesis either of murder or of an accident, the accused is entitled to the benefit of the hypothesis which is consistent with his innocence The fact that the accused was absconding can be explained by fear of consequences either of a murder or of an accident (*Young, C J. and Ram Lall, J*) GORAKH *v* EMPEROR 40 P L R. 542

——**S 302**—*Murder or culpable homicide—Lathi blow on the head—Death resulting.*

A lathi is a lethal weapon and any one who uses it on the head of another with such force as to fracture the

A I R. 1938 Oudh 256

——**S 302**—*Offence under—Accused eighteen years old, bit excited and somewhat drunk striking heavily on head of man lying prostrate—Proper sentence.*

The accused who was eighteen years of age and who on his wedding day was a bit excited and some drunk struck a heavy blow with a stick on the top

PENAL CODE (1860), S. 299.

and kill her, the offence is murder and the conviction should be under S. 302, I.P. Code, and not S. 304, culpable homicide. The intention to be looked at is intention at the time that the accused strikes the victi and not at the time when he leaves his house for the purpose he has on hand. The latter is not the material time. A man's intentions are to be in relation to the surrounding circu

Lobo, J.—The test to be applie case of culpable homicide, apart fr S. 300, I.P. Code, is whether the Cl. 1 or 3 of S. 300, evidence and circumsta murder; if it is not, the (*Davis, J.C. and Lobo,*

——S. 299—Intention — Knowledge — Murder—Drunkenness—When available, as defence—Person generally in the habit of drinking—Killing by—Offence. *See* PENAL CODE, SS. 86 AND 299.
1937 M.W.N. 1329.

——Ss. 299 .
to kill—If nece
It is not only offence of murd does an act with cause death or death, he can be murder in that KHAN *v.* EMPE

1938 O A. 154 = 1938 A Cr C. 11 = 1938 O L R 108 = 1931 O.W.N. 184 = 10 R.O 220 = 39 Cr L ... A I.R. 1938 ...

——Ss. 300, 302 and 326—*Applicability—on the left forearm—Radial artery pierced caused by haemorrhage—Offence.*

The forearm of a man is not a vital part, and a person stabbing another on the fore arm cannot be held to the guilty of murder or culpable homicide not amounting to murder, though death is caused. In the course of an altercation between the accused and the deceased, the accused stabbed the deceased with a knife on the left forearm. The radial artery was pierced and the deceased died of haemorrhage soon after.

Held, that accused was not guilty of murder or even culpable homicide not amounting only guilty of voluntarily causing S 326, I. P. Code, as the hurt w accused must have known that by was likely to cause grievous hurt.
KOTTENGODAN ALAVI *v.* EMPEROR.
1938 M.W N. 1274.

——S 300— *Murder — Injuries inflicted very serious and several in number.*

Where the injuries inflicted by the accused on the

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EMPEROR. 177 I C. 944 = 39 Cr L J. 979 = 48 L.W. 415 = 1938 M.W.N. 871 (1).

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The accused struck the deceased on the head with a

skull, and the medical examination revealed that a clot of blood was found present on the brain underneath the

fell under S. 300, thirdly, and the accused was liable to conviction under S. 302, I. P. Code.

Held, further, that the act of the accused did not fall under Excep 4 of S 300, which covered only acts done in a sudden fight, there having been no fight in the present case. (*Burn and Lakshmana Rao, JJ.*)
CHINA NAGADU *v.* EMPEROR. 1937 M W.N. 1129.

——S 300 (3)—*Scope—Number of serious injuries—Cumulative effect being death.*

ed no less than 28 injuries. wounds on the legs and ms had been fractured at bone had been dislocated, in the upper jaw was missing. There were also two contused wounds skin deep on the head, and contusions on other parts of the body. It may be that none of these injuries individually was sufficient to cause death, but death was due to the cumulative effect of the multiple injuries. On these

S 300. (Tek Chand and Ram Lall, JJ.) ...
SHER MOHAMMAD *v.* EMPEROR.
A.I.R. 1938 Lah. 834.

—— Ss. 300, Excep. 1 and 304—Brother dragging away sister from company of accused—Accused killing brother—Offence. *See* PENAL CODE, Ss. 100 AND 300, EXC. 1. 173 I C. 698.

——Ss. 300, Excep 1 and 302—*Conditions necessary for application of Exception—Interval of time between provocation and the killing—Effect.*

PENAL CODE (1860), S. 300.

For the Excep. 1 to S. 300, I. P. Code, to apply, the accused must be deprived of the power of self control by provocation which is not only grave but also sudden. Where the accused after seeing the deceased committing adultery with his wife, waited for the deceased to return and then permitted him to go to sleep and there after spring on the deceased and killed him, the circumstances were held to be such that the provocation was both grave and sudden within the meaning of Excep. 1 to S. 300 I. P. Code, and that the accused was not guilty of an offence under S. 302, I. P. Code, but could only be convicted under S. 304. (*Bennet and Varma, JJ.*) BALKU v. EMPEROR

I.L.R. (1938) All 789 = 1938 A.W.R. (H.C.) 473 = 1938 A Cr C 62 = 177 I C. 821 = 1938 A L.R. 790 = 11 R.A. 227 = 39 Cr.L J. 956 (2) = 1938 A.L J. 689 = A.I.R. 1938 A 532.

——**S 300, Excep. (1)**—*Grave and sudden provocation—Provocation given to accused by a poster of which he had knowledge for two days—If amounts to.*

Where the accused stabbed the deceased owing to provocation caused by a certain poster of which he had knowledge for at least two days, the provocation cannot be said to be sudden, and the accused is guilty of murder under S 302, I. P Code (*Young, C.J. and Abdul Rashid, J*) AZIZ AHMAD v. EMPEROR.

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——**Ss 300 Excep 2 and 302**—*Private defence—Accused provoking quarrel—Plea, if available.*

Where an accused began quarrel by acting in an improper manner towards the deceased's wife, and when he was asked by the deceased and the deceased's wife to leave the scene peacefully he declined to do so, whereupon a fight ensued in which the accused killed the deceased

Held, he could never plead the right of private defence. (*Roberts, C.J and Dunkley, J*) THE KING v. NGA PU GYI.

178 I.C 413 = A.I.R. 1938 Rang. 441.

——**S. 300, Excep. 4**—*Applicability—Accused using weapon against unarmed person in sudden fight.*

The using of a weapon by one person against an unarmed person in a sudden fight is not within the limits of Excep. 4 to S. 300, because it is expressly provided that no unfair or undue advantage must be taken by one of the combatants if the plea of sudden fight is to be raised by way of exception. (*Roberts, C J. and Sharpe, J.*) SYED AHMED v. EMPEROR.

173 I C 299 = 10 R R. 335 = 39 Cr.L J. 300 = A I.R. 1938 Rang 15

——**S 300, Excep. 4**—*Applicability—Fight ensuing upon a sudden quarrel—Stabbing in the heat of passion*

[illegible] v. EMPEROR.

1938 M.W N 31 = 47 L.W. 149 = A.I.R. 1938 Mad 403.

——**Ss. 302 and 304**—*Accused striking deceased one blow with stick on his head under provocation—Offence committed.*

PENAL CODE (1860), S. 302.

Where the accused struck only one blow with a stick on the head of the deceased in a sudden passion provoked by the deceased who was drunk and was abusing the accused's sister and mother in filthy language, he cannot be convicted of murder in the absence of proof of the intention and knowledge described in S 300, I. P. Code. He can properly be convicted under S. 325 or S. 304, Part II, I. P. Code. (*Coldstream and Jai Lal, JJ.*) JOGINDAR v. EMPEROR. **40 P.L R. 159.**

——**Ss. 302 and 304**—Applicability—Charge under S. 302—Prosecution not proving intention but proving knowledge required by S. 304, Part 2—Proper cause *See* CRIMINAL TRIAL—BENEFIT OF DOUBT.

A I R. 1938 Sind 63.

——**S. 302**—Applicability—Stabbing a man with knife on forearm—Death caused by haemorrhage—Offence. *See* PENAL CODE, SS. 300, 302 AND 326.

1938 M.W.N. 1274.

——**S. 302**—*Concerted attack—Doubt as to who caused death—Sentence.*

When once the guilt of murder is proved the proper penalty to be passed is a matter for the discretion of the Judge and it is by no means true to say that merely because there is a doubt as to which of the several of the attackers inflicted the fatal blow this is sufficient ground for withholding the death sentence in the case of any or all of them. But a person who has even wrongly got the benefit of a lenient sentence at his trial, may sometimes be allowed to benefit by his good fortune, provided the sentence passed is one which is legal. (*Roberts, C. J. and Spargo, J.*) TUN KHINE U v. EMPEROR.

178 I C 298 = A.I R. 1938 Rang 331

——**S. 302**—*Evidence—Benefit of doubt.*

Where the prosecution evidence is of a partisan character and there is a doubt regarding the very presence of some of the prosecution witnesses at the spot and further though they say that cutting and penetrating weapons were carried by the accused, no such injury is found on the complainants, there is sufficient amount of doubt in the case and the accused must be given the benefit of that doubt. (*Tek Chand and Ram Lal, JJ*) AHMAN v. EMPEROR. **40 P L R 697 = A.I R 1938 Lah 787.**

——**S. 302**—*Evidence—Death capable of explanation on hypothesis of murder as well as of accident—Absconding of accused—Benefit of doubt*

If death can be explained on the hypothesis either of murder or of an accident, the accused is entitled to the benefit of the hypothesis which is consistent with his innocence The fact that the accused was absconding can be explained by fear of consequences either of a murder or of an accident. (*Young, C.J and Ram Lall, J*) GORAKH v EMPEROR. **40 P L.R. 542.**

——**S 302**—*Murder or culpable homicide—Lathi blow on the head—Death resulting*

——**S 302**—*Offence under—Accused eighteen years old, bit excited and somewhat drunk striking heavily on head of man lying prostrate—Proper sentence.*

The accused who was eighteen years of age and who on his wedding day was a bit excited and somewhat drunk struck a heavy blow with a stick on the top of the

PENAL CODE (1860), S. 302.

head of a man who was already lying prostrate because of an attack on that person by another man and the person died.

Held, that, although the case came near the border line between culpable homicide and murder, yet it fell on the side of murder.

Held further that under the circumstances a sentence of transportation should be passed with recommendation for commuting sentence to detention for four years in Borstal School which would be sufficient. (*Roberts, C. J. and Spargo, J.*) NGA PAW *v.* THE KING.

174 I C. 442=39 Cr.L J 403=10 R.R. 40(
A I R. 1938 Rang

——Ss 302 and 304—*Offence under—Accu inflicting injury in sudden fight on deceased.*

Where in a course of sudden quarrel between the accused and the deceased, the deceased expressed his

therefore be convicted under S 304 and not under S 302 (*Roberts, C J. and Sharpe, J.*) SYED AHMED *v.* EMPEROR. 173 I.C 299=10 R R. 335=
39 Cr L J. 300=A I R. 1938 Rang 15.

——S. 302—*Offence under—Injuries caused by accused resulting in gangrene and causing death*

Where a person was seriously injured by the and died subsequently, but in *post mortem* exam it was found that the immediate cause of deal gangrene which had set in in the right foot and

death—Death due to infection.

Where an injury w
of nature to cause de
and the death took p
fact however would n
responsibility of the
Spargo, J) NGA MYAUK NYO *v.* EMPEROR.

174 I C 338=39 Cr.L J 412=10 R.R. 401=
A I.R. 1938 Rang. 56.

——S. 302—*Poisoning—Administration of dhatura by wife to husband—Desire to get rid of him—Inference—Presumption of guilt.*

If one deliberately administers a common poison like dhatura the effects of which are fairly well known, it is no defence to say that one failed to grade the exact dose correctly so as to cause some injury short of death. Where dhatura was administered in a fatal dose to a husband by the wife, with a view to get rid of him in order to continue her relations with her paramour, the wife is guilty of murder. (*Grille and Digby, JJ.*) MT. MINAI *v.* EMPEROR. 174 I.C. 386=
39 Cr.L J. 405=10 R N. 382=
A I.R. 1938 Nag. 318.

——S 302—*Proof of offence—Blood stains on clothes —Evidentiary value of.*

Villagers often have blood-stains on their clothes. Their occupation is of such a nature as to render this

PENAL CODE (1860), S. 302.

inevitable. The existence of a few small blood stains on a man's shirt or *dhoti* is not enough to found a conviction on in itself, though it is important corroborative evidence when the accused is directly implicated by other evidence or circumstances. (*Grille and Bose, JJ.*) SHALIGRAM *v.* EMPEROR. 10 R.N 185=
39 Cr L J. 105=172 I.C. 213=A.I.R. 1938 Nag. 52.

——Ss. 302, 304 and 86—*Scope—Accused so intoxicated as to be unable to form intent to kill—Offence committed.*

culpable homicide if the offender causes death by doing an act with the knowledge that he is likely by such act to

offence would be one of culpable homicide only (*Mosely, J.*) NGA HPEIK *v.* THE KING.

176 I C. 103=11 R R. 39=99 Cr L.J. 689=
A I R. 1938 Rang. 219.

——S. 302—*Sentence—Crime committed in state of*

Vhere therefore
e in a state of
however slight,
of law should
JJ.) NGA PO
THAN *v.* KING. 178 I C 431=A I.R. 1938 Rang. 448.

CODE, S. 439. 1937 M.W N. 1241.

——S. 302—*Sentence—Duty of Court—Conviction of four persons for murder of one man—Proper sentence.*

It is no part of the duty of a Criminal Court to be influenced by public feeling in the matter of awarding sentence on conviction of an accused in a trial for murder. Its duty is to administer the law. The law says that the proper sentence for murder is death, and that when, on a conviction for murder, the Court passes any sentence other than a sentence of death, the Court shall state in its judgment the reasons why the sentence of death was not passed. The state of public feeling, even if there is a general public feeling against capital punishment, is not an admissible reason for refraining from passing the sentence of death. Nor is it permissible to refrain from sentencing the murderers to death merely because their numbers exceed the numbers of their victims. When four persons have together planned and executed the murder of a single person, each of them must be sentenced to death unless there are some legal reasons for not doing so. (*Burn and Lakshmana Rao,*

PENAL CODE (1860), S. 302.

JJ.) LAKSHUMANNA, *In re.* 1938 M.W.N. 1166 = 48 L.W. 720 = (1938) 2 M.L.J. 1028.

——S. 302—Sentence—General rule as to—Difference between Ss 302 and 396. *See* PENAL CODE, Ss. 396 AND 302. 1938 A.W.R. (H C.) 642.

——S 302—*Sentence—Injuries not on any vital part.*

In cases in which none of the vital parts has been touched, and yet the victim has been beaten in a most merciless manner and been practically pounded to death, sentence of death is proper in the absence of any extenuating circumstance. (*Tek Chand & Ram Lall, JJ.*) WARYAM SHER MOHAMMAD *v.* EMPEROR. A.I.R. 1938 Lah. 834.

——S. 302—*Sentence—Lesser penalty—When justified.*

The deceased, who was the wife of the accused, was

a son, murdered the deceased.

Held, that it was not a case in penalty of law should be imposed and justice would be met by a sentence for life (*Young, C.J. and Tek Chand, J.*) KARTAR SINGH *v.* EMPEROR. 176 I.C 666 = 11 R L. 224 = 39 Cr.L J. 769 = 40 P L.R. 854 = A.I R. 1938 Lah. 556.

——S. 302—*Sentence—Murder committed for attack on leader of religious community.*

It would be dangerous in this country to give cause for belief that death would not as a rule result from murders, even when they are committed for attacks on leaders of religious communities, or under their influence,

death—Offence committed.

Where the accused struck an old man on the head with a *takua* thereby causing injuries of simple nature, and the fractures which caused the death of the old man were caused when he was knocked over by the accused, it is impossible to hold that the act of knocking him

hurt and therefore even a conviction under S. 325, I P Code, cannot be sustained. The accused, in the circumstances, is liable to conviction or simple hurt under S 323 read with S 324, I P. Code (*Blacker, J*) RAJU *v* EMPEROR 40 P L R. 562.

——S 304—*Conviction—Basis of—Burden of proof.*

Every death by violence is not culpable homicide. Some at least can be justified, and the burden is always on the prosecution to prove by evidence cide was culpable. In the absence of dence to justify a finding that the killing act, a conviction cannot be sustained SANNA BASYA *v* EMPEROR. 1937

——Ss 304 (1) and 302—*Applicable murder—Facts to be proved—Proof Necessity.*

PENAL CODE (1860), S. 304-A.

Cases of homicide cannot be decided by adherence to mechanical rules, the decision in each case must depend upon the knowledge and intention with which the injuries were inflicted, and the knowledge and intention of the culprit must be judged with reference to the particular circumstances of each case, and in arriving at a decision on this crucial point reported cases can be of very little assistance. To establish the offence of murder, it is not sufficient that the injury inflicted was in fact sufficient in the ordinary course of nature to cause death; it must further be proved that the assailant intended to cause an injury of this kind. Where it is doubtful whether the accused had the intention of causing injury sufficient in the ordinary course of nature to cause death, and death is caused by a blow inflicted with a sharp edged weapon with such violence as to sever completely the offence of culpable ... ler, under the first and not of murder *JJ*) NGA AUNG 5 = 10 R R. 485 = 1938 Rang. 156.

299 AND 300. 32 S.L R 18.

——S. 304, Part 2—*Accused striking deceased with iron rod—Sentence.*

The deceased and the accused were neighbours. One day the accused's father began to dig a water channel close to the wall of the deceased's house. The deceased begged him to dig it a little distance away so as to avert any danger of his wall collapsing. This request led to an altercation and accused's father and the deceased grappled with each other. While they were doing so, the up with an iron rod with which the water-being dug and seizing it with both hands on the deceased's head. The deceased fell

the accused must be credited with the hat the heavy iron rod was likely to cause ould therefore be rightly convicted under Part 2 of S. 304 However in the circumstances of the case the sentence of five years' rigorous imprisonment was unnecessarily severe There was no antecedent enmity between the parties. The quarrel arose very suddenly. The choice of weapon was fortuitous and was not one which indicated any real intention to kill or to cause saw his father grappling extent there was some the act he did These (*Blacker, J*) SADHU ..C 642 = 11 R L 350 = 927 = 40 P L R 935 = A I R. 1938 Lah. 618.

——S 304, Part 2—*Offence under—Accused striking deceased with stick on head to pick up quarrel.*

Where the accused himself went to a certain place and in order to pick up a quarrel struck the deceased on the head with a stick in a free fight, which took place over certain building, resulting in the death of the deceased,

Held, that the accused had no right of private

Plea of—Sufficiency.

10 B.S. 288 = A.I.R. 1938 Sind 100.

——S. 304 A—*Conviction — Essentials for—Mere carelessness—Sufficiency.*

S. 304-A, like other sections of the Penal Code, requires a *mens rea* or guilty mind. The rashness or negligence must be such as fairly to be described criminal. Mere carelessn
tion under S. 304-A. A
loaded with wooden slee
drove the lorry several tin
one occasion when the lo
not being driven fast, one
of the stone pillars. Th
person standing behind it

Held, that it could not be said
not caused directly by the act of t
that it was not the lorry itself but
struck the pillar was a matter of no consequence. Similarly the fact that it was not the sleeper itself b stone in a pillar which struck the deceased did make the act of the driver merely the indirect remote cause of the deceased's death. However, in the circumstances of the case, the driver was guilty of only an error of judgment and not of criminal rashness. He therefore could not be convicted under S. 304-A. (*Davis, J C.*) KANJI JAMA *v.* EMPEROR.

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Held, (1) that the conviction was correct and must be confirmed ; (2) that the sentence was far too lenient even for a first offence, in view of the fact that the accused was guilty of reckless disregard of the safety of his passengers' lives to sc
never again be licensed t
the sentence should there
rigorous imprisonment
(*Newsam, J.*) MOHAM

——S. 323—Offence
peace *See* CR. P. CODE
THE PEACE.

——S 323—*Some of assailants not actually striking victim—Whether can be convicted.*

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——S. 326— knife on left forearm—Piercing of radial artery and death ensuing due to haemorrhage—Offence. *See*

38 M.L.W N. 1274.
ting off wife's nose
Proper sentence in such cases.

The act of nose cutting is one which imports deliberate design of a particularly brutal and cruel character and must be severely punished. A sentence of nine months' rigorous imprisonment for such an offence is inadequate Accused and his wife used to quarrel with

as convicted under S. 326,
nine months' rigorous im-

Held, that the sentence of nine months was inadequate

40 Bom L.R. 832 = A.I R. 1938 Bom. 430.

——S 337—"*Rashly and negligently*"—*Driver of motor faced by sudden emergency and having to make quick decision—Accident caused by act of pedestrian—*

here, going at a speed which is not excessive, he
the car and, by swerving, nearly succeeds in
g the pedestrian, but owing to the stick of the
an being knocked by the mudguard, the pedestrian is thrown clear and gets injuries the accident is
himself, rashness or negligence
rred so as to render the driver
der S 337, I. P. Code. To do so
would be taking an unduly strict view of the duties of a motorist. (*Gruer, J.*) MADHORAO *v.* EMPEROR
1938 N.L J. 44

——Ss 337 and 307—*Shooting blindly with shot*

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ney, J.)

176 I C. 150 = 11 R.R. 31 (2) = 39 Cr L J. 692 = A I R. 1938 Rang. 220.

——Ss. 338 and 279—*Negligence—What it means*

there was no negligence. (*Niyogi, J.*) DEVIDAS *v.* EMPEROR. 1938 N.L J. 226.

PENAL CODE (1860), S. 341.

——S. 341—*Applicability—Stopping a person by force by catching his bandy bull—Offence.*

Where it was found that the accused twice stopped the complainant by force, catching hold of his bandy bull.

Held, that it was quite enough to sustain the conviction of the accused under S. 341, I. P. Code. (*Burn, J.*) MUHAMMAD YUSUF SAHIB, *In re.*

48 L.W. ...

——S. 342—*Offence-* ...
must be used—Show or t...

To constitute the offe... required and not mere show or threat of force. (*King, J.*) KOYA MOIDIN v. EMPEROR.

1937 M.W.N. 1198 (1).

——S 353 — *Applicability — Panchayat Board—Warrant of attachment not regularly signed but bearing impression of facsimile rubber stamp of President—Legality—Obstruction to attachment—Hurt caused to officer executing warrant — Offence—Madras Local Boards Act, S.* 214 (2).

S. 353, I.P. Code (as well as S. 186, I. P. Code, the offence under which is included in the offence under S 353) does not presuppose the existence of a legal warrant under which the public servant should act. If

...

bill collector entrusted with the execution of such a warrant and causes hurt to the bill-collector, he is guilty of an offence under S 353, I P. Code, and is liable to conviction (*Horwill, J*) PEER MASTHAN ROWTHER v EMPEROR 177 I.C 448= 39 Cr L J. 879=11 R M. 332=1938 M.W N 418= 47 L W. 673=A.I R 1938 Mad. 659.

——S. 353—*Resistance to warrant under S. 88, Cr P. Code—Absence of proclamation under S. 87, Cr. P. Code—Conviction under S. 353, if justified.*

When once a warrant is issued under S. 88, Cr. P. Code, the mere fact that a proclamation under S. 87 had not already been issued, would not justify the conclusion, that those who went to execute the warrant were not acting in execution of their duty as public servants All that is necessary to justify a conviction under S 353 of the Penal Code is that the person

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39 Cr L J 570=1938 A W R (H C) 124= A I R 1938 All. 220

——S 361—*Applicability—Father of child deceitfully getting child from wife's custody to own custody—Offence.*

A person who is in fact the father of a child, and in law entitled to the lawful custody of the child cannot come within the scope of S 361, I P Code, and his act in taking the child from the keeping of his mother can not amount to an offence of kidnapping from lawful

PENAL CODE (1860), S. 375.

DARAYYA v. KOTAYYA. 47 L.W. 568= I L R. (1938) Mad. 805=178 I C. 67= 39 Cr L J. 993=1938 M.W.N 385= A.I R. 1938 Mad. 656=(1938) 1 M.L J. 670.

——S. 361, Excep —*Scope.*

The Excep. to S. 361 simply is that the section does not extend to the act of any person who in good faith ... o the lawful ... whatever of ... control of her ... *JJ.*) KAT ... 6 I C 456=
11 R.C. 139=39 Cr.L J. 751=A I R. 1938 Cal 475.

——Ss. 366 and 376—*Charges under—Conviction under S.* 366 *only—Legality.*

Where the accused are charged under Ss. 366 and 376, it is open to the jury to convict the accused under S 366 and acquit them under the main charge under S 376 and there is no inconsistency in such a finding. Where a man has illicit intercourse with an adult woman with her consent after abducting her, it is not rape under the law. In such a case, the accused will be held guilty under S 366 but not under S 376. (*M C. Ghose and Bartley, JJ.*) EBADI KHAN v. EMPEROR.

176 I C 104=11 R C 36=39 Cr.L J. 674= A I R. 1938 Cal. 460.

...*l abducted—Value of.* ... 366, the evidence of the ... cted must be taken with ... *lacker, J*) MOHAMMAD ... J. 97=11 R L. 265 (2)= ... 844=40 P.L R 730= A I R. 1938 Lah 474.

——S 366—*Young man abducting girl of marriageable age—Presumption as to his intention*

...

be compelled to marry against her will In cases of forcible abduction, there can seldom be direct evidence as to the actual intention of the abductor and that intention must be inferred from the circumstances of each case under S. 114, Evidence Act Human nature being what it is, whenever one finds a young man abducting a girl of marriageable age, the first natural presumption must be that he has abducted her with the intention of having sexual intercourse with her either forcibly, or with her consent after seduction, or after ... If he has any intention other than that ...ested by the natural circumstances of the ...en lies upon him under S 106, Evidence ... that intention. (*Blacker, J*) MOHAMMAD ...PEROR 177 I C 97=11 R L 265 (2)= 39 Cr L J 844=40 P L R 730= A I R. 1938 Lah 474.

——S 366 A—*Offence under—Proof.*

The mere circumstance that the accused accompanied a person who was alleged to have raped the girl or he was trying to sell the girl, possibly for immoral purposes, may be suspicious but is not sufficient to establish the essential ingredients of the offence under S 366 A. (*Ram Lall, J*) HARDIAL v EMPEROR

177 I C 938=39 Cr L J 967=40 P L R 903= A I R 1938 Lah 684.

Inference of rape if justified.

The mere existence of the injury not necessarily and inevitably justify there had been rape. (*Mackney, J.*) v. THE KING. 177 I C. 710 = 11 R R. 160 = 39 Cr.L J. 944 = A.I.R 1938 Rang 298.

——S. 379—*Fishing in tank connected with a river—Bona fide claim of right—Fishes if taken 'dishonestly.'*

Where a person takes fishes from a tank which is so connected with a river that the fish and water come from the river to the tank and *vice versa*, he cannot be held to

SINGH v. EMPEROR. 1938 O.W N. 1096 = 178 I.C. 256 = 1938 O A. 902 =

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shown, and the taking of such cattle is theft and not criminal misappropriation (1892 96) 1 U B.R. 238, Appr. (*Mosely, J.*) PAW DIN v. THE KING 1938 Rang L R 63 = 175 I C. 515 = 10 R R 503 = 39 Cr.L J. 607 = A I R 1938 Rang. 138.

——S. 379—*Seizure of debtor's property to force payment of debt—If an offence.*

Where a creditor seized the leather bag on the back of his debtor's buffalo and took it away with a view to force the repayment of the debt, it is an offence as the intention was clearly to retain the property till the debt was paid, and in the event of its non payment the intention must be presumed to be to keep the property for good. (*Grille, J.*) BHAGYA v. EMPEROR. 1938 N.L J. 302.

——S. 380—*Sentence of whipping—Accused aged 19*

the general rule under S. 302 is that a sentence of death should follow unless reasons are shown for giving a lesser sentence. (*Bennet and Verma, JJ.*) LAL SINGH v. EMPEROR. I L R (1938) All 875 = 1938 A Cr C 107 = 1938 A L R 881 = 1938 A W R (H C) 642 = 1938 A L J 943 = A I R. 1938 All. 625.

——S. 397 — *Applicability — Conviction under — Conditions—Actual infliction of blows or injuries with dangerous weapons—Necessity.*

onviction under ould actually in in their posses- t dangerous wea- eir exhibition of them, the be robbed are likely to be at the commission of the d, they can be punished under S. 397. (*Horwill, J.*) THEVAR SERVAI v. EMPEROR. 173 I C. 450 = 1938 M W.N. 215 = 10 R M. 587 = 39 Cr L J. 323 = A.I.R. 1938 Mad. 477.

——S. 401—*Charge under—Evidence—Sufficiency—Evidence of actual association of particular accused—Necessity.*

a big gang was in of depredation on a and Ceylon and associated together parts so distant as Calcutta, Midnapore, Karachi, various parts of Ceylon and Rangoon, that is sufficient to support a charge

and substantial enough to warrant a conviction. (*Horwill, J.*) ARUMUGAM v. EMPEROR 1938 M.W N. 595 = 48 L W. 639 = A.I R. 1938 Mad 858.

——S. 403—*Accused taking ornaments from complainant promising to marry his daughter to him—Accused subsequently marrying his daughter to another and denying receipt of ornaments—If guilty of offence.*

Where on the accused promising to marry his daughter to the complainant, the latter handed over to the accused certain ornaments as presents to the bride in consideration of the marriage, but the accused subsequently gave his daughter in marriage to some other person and denied all knowledge of the ornaments,

Held that the accused was technically guilty of dishonest misappropriation under S. 403, I. P. Code, but re appropriate proceedings would have been the Civil Courts. (*Derbyshire, C.J. and J.*) MOHORI LAL CHOWDHURY v. 42 C.W.N. 783.

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177 I.C 278 = 11 R L 288 = 39 Cr L J 851 = 40 P L R. 870 = A.I R 1938 Lah. 634.

——S 403—*Offence under—Proof of receipt and retention—Presumption—Plea of return or refund—Onus.*

When once it is proved that a Patwari knowingly received certain sum of money in excess of the land revenue and retained it, without properly accounting for it, then the presumption arises that the money continued to remain with him and as such when a plea of return or refund is raised, the onus is on the accused to prove such return or give any other reasonable explanation. (*Gruer and Niyogi, JJ.*) PROVINCIAL GOVERNMENT,

and agreeing to hold goods and proceeds thereof in trust for another—Dealing with proceeds in violation of terms—Offence.

It cannot be broadly stated that a person cannot commit criminal breach of trust of his own property and that in order to bring a case within S. 405 there must be actual delivery by the owner. Where a person hypothecates goods in his shop as a collateral security against an advance and agrees to hold the goods and the proceeds thereof in trust and to pay the proceeds received by him, that person, by this trust receipt, gives a beneficial interest in the goods to another and holds the goods, with which he is entrusted as legal owner, in trust for another. Hence if he deals with the proceeds in violation of the terms of the trust he commits an offence under S. 405 provided he has the necessary criminal intention (*Davis, J C*) GOBINDRAM v. EMPEROR 174 I C 560 10 R S 266= 39 Cr L J. 509=A I R 1938 Sind 73

——S 406—*Applicability—Pawnee—Sub pledge by—Offence*

The pawnee or pledgee has the right to make a sub-pledge of the goods pawned to him to

interest, and a sub-pledge of the pledge

be regarded as amounting to criminal

under S. 406, I. P. Code (*Pandrang Row, J.*) NEMI CHAND PARAKH v. EMPEROR.

I.L.R (1938) Mad 639=176 I.C 391= 39 Cr L J 716=11 R M 71= 1938 M W N 255=47 L W 359= A I.R 1938 Mad 551=(1938) 2 M L J 161

——S 406/511—*Offence under—Holder of lottery ticket lodging it with authorities for payment of prize money—Shareholder in ticket—If can file complaint against him.*

Where under the terms of a lottery the accused is the

him under S 406/511, I P Code, by a shareholder in the ticket on the allegation that the accused is denying this fact and is trying to take the prize money all for himself (*Bartley and Henderson, JJ*) DHANI SARDAR v HAKIM DOSAD. 42 C W N 648

——S. 408—*Employee taking away his security deposit before adjustment of accounts—If guilty of offence.*

An employee is not entitled to take away from his employer in a surreptitious manner the money deposited by him as security, until he receives his discharge after the adjustment of his accounts in the ordinary course If he does so there is at least a temporary misappropriation in respect of the amount so taken, although there is no evidence that any money beyond that amount is due from him to his employer (*Jack and Khundkar, JJ*) SURENDRA NATH BASU v EMPEROR.

I L R (1938) 2 Cal 257=176 I C 126= 11 R C 41=39 Cr L J 691= 42 C W N 618=A I R 1938 Cal 451

——S. 409—*Applicability—Trust—When created—Existence as to—Test*

The existence or non existence of a trust in any particular case does not depend upon the use of terms employed by the parties but upon the actual of the case. The complainant's firm had agree

to receive certain interest on the money advanced and also a commission on sales effected by the accused. The sale proceeds of the goods sold were to be paid into the complainant's firm. As soon as the goods were stored in the godown, the ownership in the bags was to vest in the complainant. The accused was solely responsible for the sale proceeds of goods sold

Held, that the money with which the goods were purchased or the goods after they had been purchased were not the property of the complainant's firm entrusted to the accused as his agent Therefore there could be no offence under S 409 in the event of any default in payment of the sale proceeds by the accused. (*Lobo, J.*) KARAMALI MANJI v EMPEROR

174 I C 145=39 Cr L J. 399=10 R S 244= A I R. 1938 Sind 57.

——S. 409—*Lambardar failing to deposit collected land revenue—If commits an offence.*

The failure of a lambardar to deposit land revenue collected by him does not constitute an offence under S 409. As the lambardar is bound to pay on due date all the land revenue recoverable from an estate, irrespective

ment and the lambardar over the question of recovery of land revenue is consequently one of a civil nature. (*Almond, J C and Mir Ahmad, J*) ADVOCATE-GENERAL, N W.F P v MIRAJAN SHAH.

176 I C 406=11 R Pesh 7 (2)=39 Cr L J 741= A I R 1938 Pesh. 25.

——S 409—*Offence alleged of conspiracy to commit breach of trust and specific charges with regard to definite sums of money—Policy of splitting up charges—Propriety.*

A Secretary of a Co-operative Central Bank and the

posits

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ich of

regard to definite sums of money When the case came on for trial the prosecution split up the case to be tried into four separate trials In the first trial the Secretary was given three years under S 409 He was also convicted of conspiracy No separate sentence was passed upon him. In the second trial, he had been given two years under S 409 No separate sentence for conspiracy was passed upon him Assistant Secretary was given three years under S 409 in the first trial and four years in the second trial No separate sentence was passed upon him on the conspiracy charge The prosecution in the first trial alleged a separate conspiracy to embezzle a particular sum of money. In the second trial, they went a little further and alleged a separate conspiracy to embezzle money coming from a certain bank.

Held, that though on a technical ground the two conspiracies of which the accused were found guilty were not the same, yet it was really so impossible to distinguish them that, if different sentences had been imposed, the High Court most certainly would have made them concurrent

Held, further, that the method of splitting up the charges as adopted by the

s improper

ne subject-

have been

a sentence

PENAL CODE (1860), S. 411.

that would be sufficient. There would then have been no necessity for proceeding with the trial of any more charges. The method of proceeding with an indefinite number of trials and imposing sentences to take effect one after the other was improper. (*Henderson and Khundkar, JJ.*) JAGADISH PROSAD *v.* EMPEROR.
43 C W.N. 23=A.I R. 1938 Cal. 697.

——S. 411—*Dishonest intention—Failure to prove—If fatal—Inference from possession of stolen property—If justified.*

It is of course not possible for the prosecution to prove what is the mind of a person accused of an offence under S. 411, I. P. Code, but usually the possession by him of stolen property knowing it to be stolen is a sufficient fact upon which to base an inference intention and to convict him. (*Burn and Lakshmana Rao, JJ.*) APPALASWAMY, *In re.*
1938 M.W N. 1124 (1)=48 L.W. 699.

——Ss 415 and 419—*Offence under—Accused pointing out third person to process server and trying to get him falsely served.*

P had become friendly with one *R* who was a spendthrift and drunkard. *R* died a premature death on 30th June, 1936. On 2nd July, wife of *P* made an applica-

PENAL CODE (1860), S. 420.

then such damage or harm is too remote to be within the provisions of the section, which contemplates that the act done is in itself likely to cause damage or harm and which is not dependent for damage or harm upon the entirely problematical action of some other person. To use a trite phrase, the act done or omitted to be done must be the *causa causans* of the harm caused or likely to be caused. (*Davis, J. C.*) AYODHYA PRASAD SITAL PARSAD *v.* EMPEROR **178 I C. 226= A.I R. 1938 Sind 193.**

——S. 420—*Applicability—Conviction for running a lottery dishonestly—Facts necessary to sustain.*

Before a charge under S. 420 of dishonestly running a lottery, could be established against the organizers of the company it must be shown definitely that the company dishonestly failed to pay the amounts to the persons shown in the list. It must also be shown that the persons who purchased the tickets purchased them under the influence of the apparent guarantee of good faith held out by these lists in regard to the higher 'prizes.'. The organizers of a certain loan company offered to give loan to persons who applied for them on special forms or tickets for which they had to pay two annas. There was no guarantee to grant loans. The company published

R. The person admitted to be *R* but refused to accept service and when *B* was taking him to Administrative Subordinate Judge, he slipped away. Enquiry followed and *P* was prosecuted and convicted under S. 419, I. P. Code.

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about by *P's* deception upon *B* would have been a departmental enquiry against him. (*Blacker, J*) GIAN SINGH *v.* EMPEROR. **A.I R. 1938 Lah. 828.**

——S 417—*Applicability—Sending bogus insured letter—Offence.*

Whatever offence may be committed when a bogus insured cover is sent through the post, the offence of cheating the addressee within the provisions of S. 417 is not committed. (*Davis, J. C.*) AYODHYA
SITAL PARSAD *v.* EMPEROR. **178 I C**
A.I R. 1938 Si

——S. 417—*Ingredients of offence—Mere*

and convicted under S. 420.

Held, that under the circumstances the conviction was unsustainable. (*Mackney, J*) MAUNG BA THWIN *v.* THE KING **178 I C. 113= A I.R 1938 Rang. 301.**

of charms and
ble that objects
hardship or pre-
and purchasing
to look at moon
unwinking for fifteen minutes—Persons purchasing unable to do so—Offence of cheating—If committed.

Petitioner in his own name and under thirteen other aliases carried on a business of selling charms and incantations which he advertised in a number of newspaper in several Provinces of India and despatched by value payable post to persons answering the advertisements. The advertisement was to the effect that certain

which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. But when the section says "which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property," it clearly means which act or omission in itself causes or is likely to cause damage or harm to that person in body, mind, reputation or property and that if that damage or harm is dependent upon the future act of some other person

have sent for it, and the same was accepted by the Courts in evidence against the accused.

Held, that the advertisement gave a definite assurance that there was no necessity for either hardship or preparation, but that the condition referred to was contrary to that assurance, because the feat of looking at the moon unwinking for fifteen minutes was, if not impossible, at any rate, beyond the powers of ordinary human beings except by long training and preparation, and that

PENAL CODE (1860), S. 421.

the complainants having acted on the assurance of the petitioner, the accused was guilty of the offence of cheating, and was liable to conviction. (*Fazl Ali and Rowland, JJ.*) AKHIL KISHORE RAM *v.* EMPEROR.
174 I.C. 635 = 19 Pat L.T. 375 = 4 B R. 466 = 1938 P.W.N. 93 = 39 Cr.L.J. 442 = 10 R P 541 = A.I.R. [illegible]

——**S. 421**—*Offence under—Shopk* [illegible] *goods on credit—Sale by him without pay* [illegible]

The property of a debtor cannot [illegible] according to law save after the provisions of the relevant enactments have been complied with. It cannot be held, without further proof, that a shopkeeper who has stocked his shop with goods obtained on credit and who sells these goods without making any payment to his creditors has committed an offence punishable under S. 421, Penal Code. I [illegible] his own in spite of the [illegible] them, he is not can [illegible] neither is he causing [illegible] unless the creditors hav [illegible] the property he is not [illegible] any right of theirs. [illegible] MOHAMED *v.* THE KING. **176 I C 667 = 39 Cr L J. 767 = 11 R R. 70 = A.I.R 1938 Rang. 242.**

[illegible] loss to the decree holder. S. 424, Penal Code, says nothing at all as to the attachment of property. (*Allsop, J.*) TARA SINGH *v.* EMPEROR.
1938 A. Cr. C 45 = 1938 A L J 528 = 11 R A 158 = 1938 A W R (H C) 361 = 176 I.C. 960 = 1938 A L R 689 = 39 Cr.L J. 840 = = A I.R. 1938 All. 449.

——**S. 425**—*Mischief what constitutes—Filling up ditch dug by another—If mischief.*

To constitute mischief it is necessary not only that wrongful loss or damage to the public or to any person, be intended or be likely but also that any property should either by destroyed or any such change should occur in any property or in the situation [illegible] destroys or diminishes its value or utility injuriously. Filling up of a ditch dug by the [illegible] ant, by the accused, cannot be said eith [illegible] wrongful loss to him or to affect his property [illegible] so as to diminish its value or utility. The fact that the fruits of his labour are destroyed, cannot make it an offence under S. 426 for 'property' in S 425 means tangible property capable of being forcibly destroyed. (*Zia-ul Hasan, J*) RAM ROOP *v.* EMPEROR
1938 O L R. 509 = [illegible]

[illegible] ing and house repair, for agricultural purposes and for fuel, free of charge, they were excluded from the

PENAL CODE (1860), S. 441.

rakhawat forests; and it was found that the tenants had no right to cut down trees, such as *sakhua* saplings from such forests, except *jungle jharis.*

Held, that the very fact that the accused tenants went in a body to the forest and cut down about 50 cartloads of *sakhua* saplings (which could not be called [illegible]

right failed and therefore they were liable to conviction under S. 426, I. P. Code. (*S C. Chatterji, J.*) PUNIT BARHI *v.* EMPEROR. **19 Pat L T. 656.**

——**S. 426** — *Applicability—Watercourse flowing through complainant's land—Obstruction to watercourse by complainant—Accused having rights of watercourse* [illegible]

the latter who has rights of watercourse commits no offence in cutting or removing the obstructions The [illegible] l to the owner of the plot by the [illegible] bstruction in exercise of the latter's [illegible] cannot be considered to be wrong- [illegible] itter cannot be convicted of the [illegible] under S 426, I. P. Code. A tres- [illegible] ie act of trespass immediately give [illegible] understands by possession against the person whom he ejects (*James, J.*) DEOCHARAN SINGH *v.* RAM SUNDER SAHU.
178 I C. 502 = 5 B.R 112 = 1938 P W.N 642 = 19 Pat L T 703 = A I R. 1938 Pat. 538

——**S 426**—*Offence under—Drain constructed on passage over which accused has right of way—Demolition of drain by accused.*

In case of a private easement-right it is not open to the dominant owner to remove the obstruction of his own accord by taking the law in his own hands, unless the obstruction has actually become a nuisance Where a drain is constructed by the complainant on a passage [illegible]

AGARWALA **I L R (1938) 1 Cal 680 = 177 I C. 1000 = A I R 1938 Cal. 669.**

——**S 441**—*Offence under—Entry at night in complainant's house to have intercourse with complainant's* sui juris *daughter by invitation*

It must depend on the facts of each case, as to [illegible] erson in possession [illegible], in the circumstances, [illegible] an accused enters [illegible] intent to have [illegible] unmarried and *sui juris* daughter [illegible] by invitation, the accused cannot [illegible] 'primary' or even the 'subsidiary' [illegible] tent to annoy the person in possession [illegible] had taken all possible precautions [illegible] The mere fact that he knew, [illegible] i, that, if discovered, his presence in the [illegible] t cause annoyance to the [illegible] he house, is by itself not sufficient to bring [illegible] hin S. 441 17 P.R. 1906 [illegible] (*Young, C. J., Tek Chand and Monroe, JJ.*) [illegible] MAJID *v.* EMPEROR **176 I.C. 427** [illegible]

[illegible]

——S [illegible] *one house to* [illegible] *—If guilty* [illegible]

Where a person one night passes stealthily through the court yard of one house with the intention of committing adultery in another adjoining house, such person is not guilty of trespass in respect of the former house under *second alternative of S. 441. It cannot be said* that such person had intention to annoy or insult the occupant of the former house and even if he could be supposed to have known that, if discovered his presence there might cause annoyance to any person living there, this would not make him guilty of committing trespass in that house. Such person is, however, guilty of trespass in respect of the former house under first alternative of S. 441, because S. 441 means that if a person enters upon the property with intent to commit an offence on that property or on any other property or with respect to a person who is or is not in possession of the property entered upon he is guilty under it. (*Young, C. J., Tek Chand and Monroe, JJ*) MAHOMED YAR *v.* EMPEROR I.L.R. (1938) Lah. 462=176 I.C. 410=39 Cr.L.J. 734=11 R.L. 210=40 P.L.R. 813=A.I.R. 1938 Lah. 514 (F.B.).

——S. 442—*Building—Shop with an awning—If constitutes.*

The erection of an awning does not constitute a shop, a building within the meaning of S. 442, I. P. Code, when the shop in question had neither a wooden, mud or one brick wall (*Yorke, J.*) EMPEROR *v.* SHANKAR DAYAL. 177 I.C. 616=11 R.O. 59=39 Cr.L.J. 937=1938 A.Cr.C. 100=1938 O.A. 740=1938 O.L.R. 482=1938 O.W.N. 960=A.I.R. 1938 Oudh 263

——S. 447—"*Possession*"*—Order under S. 144, Cr. P. Code—Relevancy.*

Where a person was restrained from doing a particular act on a particular land by an order under S. 144, Cr. P. Code, although that order may not be taken into consideration for establishing the possession of the complainant in a trial for an offence under S. 447, Penal Code, alleged to have been committed by that person, it is relevant for the purpose of testing *bona fides* of the person against whom that order was made. (*Agarwala, J.*) RAMKISHUN AGRAWALLA *v.* EMPEROR. 173 I.C. 747=4 B.R. 880=39 Cr.L.J. 361=10 R.P. 434=A.I.R. 1938 Pat. 131.

——S. 448—*Offence under—Accused entering house in possession of complainant in asse*[illegible] *—Intention to annoy—Presumption.*

Where the accused persons ent[illegible] which there was a dispute, in the [illegible] plainant and took possession of it in the assertion of their claim.

Held, that the accused must have known that their conduct was bound to annoy the complainant, who was admittedly in possession and legally they must be presumed to have the intention to 'annoy' at any rate and that, therefore, they were guilty of the offence under S. 448, I. P. Code. (*Bhide, J.*) GHULAM AHMAD *v.* EMPEROR. 40 P.L.R. 757=A.I.R. 1938 Lah. 848

——S. 471—*User—Document mentioned in affidavit of documents—Production at instance of opposite party.*

The accused had filed a suit for dissolution of partnership in which he was required to file an affidavit of documents which were in his possession relating to any matter in question in the suit. The accused had mentioned in it a certain document, namely, a delivery order relating to certain bags, but he did not produce it in

[illegible] the defendants who [illegible] required the docu[illegible] rent was thereupon [illegible] nce. The document [illegible] and the accused was prosecuted under S. 471.

Held, that the circumstances were not enough to establish a charge under S. 471 as the accused was forced by the defendants to refer to this document in evidence. By mentioning the document in his affidavit of documents in his possession, it may be that he showed that at one stage he had made preparation for using the document, but no more than that could be inferred. (*Mackney, J.*) ABDUL SATTAR *v.* THE KING. 175 I.C. 488=10 R.R. 497=39 Cr.L.J. 592=A.I.R. 1938 Rang. 194.

——S. 477-A—*Falsification of accounts—Intent to defraud—Meaning—Ignorance that wrongful loss would be caused—If a good plea in defence.*

A reference to S. 25 of the Penal Code shows that the expressions 'fraudulently' and 'with intent to defraud' are synonymous. If there is the intention by the deceit practised to cause wrongful loss that is dishonesty; but even in the absence of such an intention, if the deceitful act wilfully exposes any one to risk of loss, there is fraud. Where the accused had prepared certain bills for payment to a contractor on the basis of fictitious entries in his measurement book, of works which admittedly were not measured, and thereby enabled the contractor to draw more sums than were due to him.

Held, that there was wilful falsification of measurement book and bill with intent that the contractor's bill *might be passed without measurements and that* these acts were fraudulently and amounted to an offence punishable under S. 477-A, Penal Code.

Held further, that it was no answer to the charge, for the accused to say that he did not know that wrongful loss would be caused to one party and a wrongful gain to the other. (*Varma and Rowland, JJ*) SUKHAMOY MAITRA *v.* EMPEROR. 16 Pat. 688=173 I.C. 759=4 B.R. 837=1938 P.W.N. 49=19 Pat.L.T. 297=10 R.P. 445=39 Cr.L.J. 374=A.I.R. 1938 Pat. 165.

——S. 478—*Trade mark—Requisites—Mark to be "distinctive"—Pictorial representation.*

A trade mark as defined by S. 478, Penal Code, implies that the mark must be 'distinctive' in the sense of being "adapted to distinguish the goods of the proprietor of a trade mark from those of other persons". A merely descriptive mark would be obviously not a [illegible] repre[illegible] have to [illegible] *v.* AS[illegible] 665=175 I.C. 144=10 R.C. 754=39 Cr.L.J. 537=66 C.L.J. 210=42 C.W.N. 112=A.I.R. 1938 Cal. 216.

——S. 482—*Offence under—Facts to be determined.*

Where a person is charged with an offence under S. 482, Penal Code, what the Court has to determine is whether the trade mark claimed by the complainant was a 'distinctive' mark, and for that purpose, it has to take into consideration the extent to which its user had rendered the mark in fact distinctive of the goods in question (*Biswas, J.*) LOKE NATH SEN *v.* ASWINI KUMAR DEY. I.L.R. (1938) 1 Cal. 665=175 I.C. 144=10 R.C. 754=39 Cr.L.J. 537=66 C.L.J. 210=42 C.W.N. 112=A.I.R. 1938 Cal. 216.

——S. 489 C—*Intention to use as genuine—Proof—Possession of large number of counterfeit notes—Inference of intention—If justified.*

Where it is proved beyond doubt and admitted by the accused that the accused was in possession of 38 counterfeit currency notes knowing them to be stolen, and the accused's explanation that he had them in order to foist them on some one else is not believed, it is impossible to conceive of any other int[illegible] of the accused than the intention of [illegible] genuine or that they may be used [illegible] large number of notes is an important [illegible] intention has to be presumed. (*Pan* [illegible]) PUBLIC PROSECUTOR v. KONDALRAO.
1938 M W N. 1121=48 L W 754

——S. 494—*Construction—"Marries"—Meaning of*

The word 'marries' used in S. 494 means marries by some form of marriage known to or recognized by the law. Merely showing that some form of marriage ceremony was gone through is not sufficient. The section does not refer to a valid marriage. A bigamous marriage cannot be a valid marriage, and apart from the bar of the first marriage, it may be that there may be some other legal impediment to the validity of the marriage of the man or woman, some legal impediment personal to the man or woman, such as consanguinity, yet if the second marriage be a form recognized [illegible] that would be sufficient to satis[illegible] sion of the section. (*Davis, J* [illegible]) KALAN v. EMPEROR. [illegible]
39 Cr J 656=11 R.S 1=A I.R. 1938 Sind 127

——Ss 494 497 and 498—*Prosecution* [illegible] *Expediency—Duty of Court to prevent abuse.*

Judges should be particularly careful to [illegible] Ss. 494, 497 and 498 are not abused for the purpose of private spite or persecution (*Davis, J C and Lobo J*) MT. KALAN v EMPEROR 175 I C 461= 39 Cr L J 656=11 R S 1=A.I R. 1938 Sind 127

——S 498—"*Detention*"—*Meaning of—Married woman found living in accused's house—Accused having sexual intercourse—Offence.*

Providing shelter for a married woman is such an inducement as to amount to detention within the meaning of S 498. Where a married woman was found living in the house of the accused for some time and sexual intercourse between them had taken place

Held that there was persuasion or inducement of the woman as would come within the meaning of the word 'detention'. (*Agarwala J*) BANARSI RAUT v EMPEROR. 177 I C 706=19 Pat L T 795= 5 B R 11=1938 P W N 817=11 R P 178= 39 Cr L J 952=A I R 1938 Pat 432

——S 499—*Defence—Limits.*

No man can ever be justified in disseminating defamatory matter unless he can bring himself within one of the exceptions to S 499 I P Code, or unless his action is privileged in other respects Having held that a person did not act in good faith it must be wrong to say that he was justified in acting as he did (*Roberts, C J and Dunkley, J*) U KUN BARRISTER-AT-LAW *In the matter of* A I R 1938 Rang 394

——S 499 Expl 2—*Applicability—Complaint of an individual member*

According to Expl 2, S 499 if a collection or company of persons as such is defamed, one of their members may make a complaint on behalf of the collection or company of persons as a whole but the defama[illegible] n the asso- [illegible] is of the [illegible] complaint [illegible] pl. (2) has

no application. (*Davis, J. C.*) AHMEDALI v. EMPEROR. 175 I C. 9=10 R S. 273=39 Cr L J 518= A I R 1938 Sind 88.

——S. 499, Eighth Exception—*Applicability—Complaint to Police by residents of locality against acts of another and praying for protection against him—Offence—Conviction for defamation—Legality—Cr. P. Code, S 196—Complaint of Police Officer—Necessity*

[illegible] against him, is the presentation of a petition to public officer with the intention of protecting the interests of the people who send the petition. The eighth exception to S 499, I P. Code, applies to the case and when the complainant admits that he does not know any of the petitioners personally, and there is no evidence of any express malice or enmity, good faith must be presumed, there can in such a case be no conviction for defamation Further, the offence, if at all, is only one of giving false information to a public officer or of making a false accusation, falling under Ss. 182 or 211, I. P. Code, and S 196, Cr.P Code, bars [illegible] of the information or the accusation is found to be defa- [illegible]

——S 499, Exc 9—*Statement in answer to requisition by investigating officer under S 161, Cr P. Code—Privileged occasion—If covered by Excep. 9 to S. 499, Penal Code*

Where the alleged defamatory statement was made in answer to the requisition by the investigating officer under S 161, Cr P Code, the statement being made on a privileged occasion would certainly come within the exception 9 to S. 499 of the Penal Code. (*Venkataramana Rao, J.*) RAMASWAMI MUDALIAR, *In re*
47 L W 136=(1938) M W N 217= (1938) 1 M L J 810.

[illegible] some other section, then no prosecution under S 500 would lie. Hence a complaint under S. 500 cannot be dismissed even if the same facts constitute also an offence under S. 182, and sanction required by S. 195 Cr P Code is not obtained A I R. 1935 Rang. 163= 156 I.C 598, Overruled, 73 Cal. 604 and A I R. 1921 Cal 1, Approved. (*Baguley, Mosely and Ba U, JJ*) U AUNG PE v. THE KING
1938 Rang L R 404=175 I C 915= 11 R R 15=39 Cr L J. 663= A I R 1938 Rang 232 (F B).

——Ss 500 and 120-B *Defamation by several—Concerted action—Joint trial—Legality.*

Where it appeared that the different accused both jointly and singly began at about the same time to make defamatory statements about the complainant to different persons, it is a case of criminal conspiracy and there can be no question of misjoinder where all the accused

PENAL CODE (1860), S. 500.

are tried together for an offence under S. 500, I.P. Code read with 120-B. (*Bennet, J.*) TARPADO SHASTRI *v.* EMPEROR. 1938 A W.R. (H C.) 467= 1938 A.Cr.C. 75=1938 A.L.J. 769.

———S. 500—*Duty of Court—Accused not raising spec fic plea of privilege—Court—If bound to see whether case under any recognised exception.*

In a prosecution for defamation under S. 500, I. P. Code, even though the accused does not raise a specific plea of privilege, it would be the duty of the Court to

lodges a complaint against him under S. 500, I P. Code, ...ecution under ... justify it, on ... to avoid the ... he sanction of the Court was neither sought for nor refused. (*Jack and Khundkar, JJ*) GURU PROSAD RAM GUPTA *v.* RAMESWAR MARWARI 176 I C. 572= 39 Cr.L J. 730=11 R C 127= 42 C.W N. 674=A I R 1938 Cal 527.

———S 504—*Offence under — Essentials—Intention —Delivery to agent of insulting photo of principal—*

subsequently shown to the person ... delivery of the insulting photo ... and hence no offence is committec ... Code. (*James, J.*) GAURISHA... SINGH. 19 Pat.L T 892=39 Cr L J 980 (1)= 177 I.C. 896 (2)=5 B R 40=1938 P W N. 812

PENSIONS ACT (XXIII OF 1871), S 6—*Jagir not transferable—Certificate by Deputy Commissioner—If* ultra vires—*Pension Rules, Rr. 8 and 9.*

The Deputy Commissioner is competent to grant a certificate under S. 6 of the Pensions Act only when the claim relates to a pension or grant which is by law, or under the terms of the grant, transferable. If a Jagir has been notified under the Punjab Descent of Jagirs Act and the rule of primogeniture applies thereto, it can not be said that the same is transferable. The grant of a certificate in respect of a Jagir of this kind is, therefore *ultra vires*. (*Dobson, F.C.*) RAJENDAR CHAND *v* KESRI CHAND. 17 L L T. 17

PETROLEUM ACT (1899), S. 15 (c)—*Master, if liable under, for acts of servant.*

Where the servant in breach of the conditions of the license of his master, delivered petrol to another not

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having a license to transport petrol, the master is liable for the action of his servant in breach of the conditions of the license. (*Weston.*) EMPEROR *v.* AMBA LAL. 1937 A M L J. 138.

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(*See* C, P. CODE, OR. 6, 7 AND 8).

———*Abandonment — Abandonment by party not concerned with right—Binding force of.*

In a suit by the zamindar questioning the right of the Government to resume certain village service inams and ... in the lands so resumed by the ... overnment gave up the right as ... is before the trial began and the ... those lands in ... e lands were ... ersonal to the ... session. ... by the Gov- ... ie question so ... of the lands ... e persons and ... the Govern- ... had no right ... me in such a ... ns concerned ... decision on ... orwill, JJ.) ... RAO *v.* SEC- ... 38 Mad. 445.

———*Amendment — Addition of parties — Powers of Court—Suit by nearest Hindu reversioners—Legislation pending suit making plaintiffs remote reversioners—Application for amendment by impleading nearest reversioners under new legislation—Dismissal of application and of suit—Propriety—Proper procedure.*

There can be no doubt that in the interests of justice Courts have ample power to allow amendments of plaints and to allow fresh parties to be joined when that becomes necessary. Where a suit instituted properly by the nearest reversioners to the estate of a last Hindu male owner

time, might not be available for the heir when the succession actually opens, the ends of justice would be best served by permitting the plaintiffs to amend their plaint and make the persons who have become the nearest reversioners party defendants and to prosecute the suit. (*Pandrang Row and Venkataramana Rao, JJ.*) VEERAYYA *v.* SUBBAMMA. 175 I C 575= 10 R.M. 799 (2)=1937 M W N. 1175= A.I R. 1938 Pat. 178.

———*Amendment—Court holding suit not cognizable by it—Amendment bringing suit within jurisdiction of Court—Refusal on ground that Court not competent to allow a suit not within jurisdiction—Propriety.*

It may be technically correct that a Court which has no jurisdiction to entertain a suit is not competent to allow an amendment of the plaint which, if granted, would bring the suit within its jurisdiction; but such a view is of no practical importance in a case where the amended plaint would be within the jurisdiction of the

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Court, for it is open to the plaintiff to amend his plaint as soon as it is returned to him and then re-present it in the same Court which would then be bound to entertain it. (*Niamatullah and Harries, JJ.*) PANDEY v. RAM CHANDRA TEWARI.

I.L.R. (1938) All. 40·
1938 A.L.R. 197·
1937 A.L.J 905=1937 R D. 551=
1937 A W.R. 919=A I.R 1938 All. 17.

——*Amendment—Powers of Court—Amendment setting up new and inconsistent case, and introducing cause of action already barred by time—Permissibility.*

A party is not competent to place an alternative case which is not consistent with the case set up originally by him and that too at a very late stage of the case An amendment [illegible] specific legal [illegible] plaint or w[illegible] cause of act[illegible] not be permi[illegible] IYENGAR v. RADAKRISHNA CHETTY.

(1938) M.W N 542=A I.R 1938 Mad 669.

——*Amendment — Powers of Court—Effect of amendment on limitation.*

The circumstances that an amendment of the plaint may have the effect of depriving the defendant of the benefit of the plea of limitation is one of the circum[illegible]

[illegible] tion judicially, and the amendment has been allowed, the amendment dates back to the presentation of the plaint, and if that date is within the period of limitation prescribed for the particular relief which the plaintiff seeks by his amendment the suit must be held to be within time. (*Agarwala and Rowland, JJ.*) KESHO DAS v. HARI KISHUN DAS. 17 Pat 268=
1938 P.W.N 431=175 I C. 354=19 Pat L T 579=
4 B.R. 580=10 R P. 620=A I.R. 1938 Pat 205.

——*Amendment — Suit for declaration of title to immoveable properties — Plaintiff also claiming as sub mortgagee—Amendment to insert prayer for sale on mortgage in ca e sale found not to confer title—If one setting up new case—Prayer for sale—If inconsistent with prayer for declaration of title*

Plaintiff who claimed certain properties under a sale and also as a sub mortgagee filed a suit claiming a declaration that he was the full owner of the plaint properties He also asserted his rights as sub-mortgagee and the rights of his mortgagor as against the defendant and he prayed the Court to give directions in respect of the working out of the relative rights of the respective parties in case the Court should hold that the defendants who claimed a charge had any right to redeem Plaintiff afterwards applied for an amendment of this plaint by insertin[illegible] that if the Court [illegible] not pass any title, [illegible] gage decree for sale [illegible] wards contended [illegible] tainable.

Held, that the suit as originally filed included an alternative claim based on the plaintiff's mortgage right, that even without the amendment it was open to the Court to treat it in the alternative as a suit for sale and that if it was not prayed for in the plaint the Court could grant the relief which was not inconsistent with the facts of the case when the defendants were not at any disadvantage in the course of the trial by reason of the defect in the pleadings, and that suit was maintainable.

Held further, that by the amendment the plaintiff [illegible] sking for a relief [illegible] (*Madhavan Nair* [illegible]) [illegible] HETTIAR v. SHRI [illegible]

1938 M W.N 785=48 L W. 292=
A I.R. 1938 Mad. 865=(1938) 2 M L J 534.

——*Assertion made in pleadings about caste of parties not traversed—Effect—Right to challenge assertion in second appeal at late stage.*

Where an assertion is made in the pleadings by a party to the effect that the parties are members of a family of Maharashtra Brahmins, and the opposite party [illegible]

I L R. 1938 Nag. 469=177 I C. 860=
1938 N L J. 24=A I R. 1938 Nag 163.

——*Construction—Mofussil pleadings.*

[illegible] alone (*Stone*, [illegible]) v LUDHESHW[illegible]

A I.R. 1938 Nag [illegible]

——*Construction—Suit for possession by person having title and right to possession—Plaintiff alleging dispossession but failing to prove same—Duty of Court —Dismissal of suit—Propriety—Burden of proof.*

Where a person who has admittedly a right and title to possession of property sues for possession, it is for the defendant to prove his title. And merely because the plaintiff has based his suit on dispossession as the cause of action and fails to establish it, the suit should not be dismissed on this technical ground, especially when the parties are residents of a rather out of the way portion of a backward district where the Courts would ordinarily use their discretion in construing the pleadings liberally and, where necessary, allowing amendments (*Rowland, J.*) BHAIRODAYAL SAHU v JAGESHWAR SAHU.

174 I C 627=4 B R. 464=10 R P. 540=
A I R. 1938 Pat. 118.

——*Duty of Advocates and pleaders—Introduction of abuse into pleadings—Propriety—Duty of Judges not to pass over.*

The practice of using pleadings as a vehicle of mere abuse is deplorable Advocates and pleaders degrade [illegible]

[illegible] *Ghani, J.*) BASAPPA v ASIATIC GOVERNMENT SECURITY LIFE ASSURANCE CO., LTD.

16 Mys L J 448=43 Mys.H.C.R. 396.

——*Duty of Court to look to substance rather than form.*

A plaint may be inartistically drawn and seek to rest a justifiable claim upon an unjustifiable basis. But the Court should hesitate to give more importance to form

PLEADINGS.

than to substance. The object of pleading is to give fair notice to each party of what his opponent's case is, and if all the documents are from the beginning before the Court there is no question of the defendants being prejudiced by the form of the plaint. (*Sir George Lowndes.*) KARAM CHAND *v.* MIAN MIR AHMAD AZIZ AHMAD. 1938 A L J. 288= 1938 O W N 326=32 S L.R. 462=173 I C. 736= 1938 A.W R (P C) 99=1938 O A. 336= 1938 A L R 232=1938 O.L R 166=47 L W. 601= 1938 M W.N. 493=10 R.P C 241=4 B R 440= 1938 P.W.N 441=42 C.W N. 989= 40 Bom.L R. 1053=A I.R 1938 P.C. 121 (P C.).

——*Duty of Court—Illegality not pleaded—Taking notice of.*

Per *Stone C. J., and Vivian Bose, J.* A Court can, and must, take notice of an illegality which emerges in the course of a case although not pleaded. But a court should be very slow to do so and should not go out of its

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177 I.C 6=11 R N 109= A.I.R. 1938 Nag 335 (F.B.).

——Fraud—Transaction impeached as 'fraudulent' and bogus'—Necessity to keep two district *See* C P CODE, O. 6, R 4 PLEADINGS 1938 N L J. 279.

——Issue raised and decided in suit—Appeal—Right of party to abandon that issue and to ask the Court to leave it out of consideration. *See* BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT, S 25. 19 P.L.T 328 (S B).

——*Issues—Fraud—To be specific*

Pleadings and issues on the influence, coercion, etc. should definite allegations, because fr separate categories in law. TULSIRAM KHIRCHAND *v.* SAO.

——New case not set up in pleadings—If can be considered. *See* HINDU LAW—DEBTS 18 Pat L T. 810

——*Powers of Court—Greater relief asked for and the smaller included in it, not mentioned—Power of Court to grant the smaller relief.*

Where though the smaller right included in a bigger right claimed is not specifically mentioned in the pleadings, Courts are competent to grant a relief less than that claimed. (*Almond, J C.*) RAM CHAND LACHMAN DASS *v.* ISHAR SINGH 173 I C 813= 10 R Pesh. 57=A I.R. 1938 Pesh. 81

——*Powers of Court—Setting up new case for plaintiff.*

A Court has no jurisdiction to set up a new case on behalf of a plaintiff (*Darling, S.M. and Mehta, J.M.*) SHARAFAT ULLAH *v.* NOOR MOHAMMAD. 1938 R.D. 746=1938 A.W.R (B R.) 358= 1938 A L J (Supp) 126

——*Suit for ejectment and suit for recovery of possession—Nature of pleadings*

In a suit for ejectment all that the plaintiff has got to do is to prove that the defendant has attorned to him as lessee or licensee of certain land, that he is the owner of the land in question and that the lease or license has been properly determined or otherwise put an end to. In a suit for recovery of possession, the plaintiff has got to prove that he has a good title to the land and that the suit is not barred by limitation in any way. (*Baguley,*

POLICE ACT (1861), S. 32.

J.) AH PO *v.* MAUNG PAN. 177 I.C. 168= 11 R.R 141=A.I.R. 1938 Rang. 124.

——*Suit for money advanced under hand note—Reference to loan and prayer for recovery of same—Absence of express alternative claim in basis of loan—Right to decree on loan.*

Where a person distinctly set out in his plaint that the debtor had borrowed money from him and it is to recover that money that the suit is instituted although he does not alternatively make a claim that he is entitled to recover the money as well on the original loan as on the basis of the handnote, that is not fatal to the suit, as all the facts necessary to a claim on the loan are alleged and proved. (*Agarwala and Rowland, JJ.*) KESHO DAS *v.* HARI KISHUN DAS. 17 Pat. 260= 4 B R. 580=1938 P.W.N 431=175 I C. 354= 10 R P. 620=19 Pat L T. 579= A.I R 1938 Pat. 205.

PLEDGE.—*See* CONTRACT ACT, SS 172 TO 178.

PLEDGING OF CHILDREN'S LABOUR ACT (1933) S. 2—*Applicability—Labour pledged to be expended after child becomes 15 years old.*

Where the labour pledged is not to be expended till after the time by which the child becomes 15 years of age, the agreement is not one to pledge the labour of a child under 15. (*Roberts, C.J. and Dunkley, J.*) DAW NYUN *v.* MANG NYI PU. A.I.R. 1938 Rang. 359.

POLICE ACT (V OF 1861), S. 7—*Appointment of Sub-Inspectors—Power conferred on designated officers —Government, if can delegate disciplinary powers to them—Burma Police Department Notification 44 of 1937—If* ultra vires—*Prosecution of Sub-Inspector—Previous sanction of Government—If necessary—Cr. P. Code, S.* 197 (1)

S. 7 of the Police Act confers the powers of appointment (which connote punishment), on certain designated

behalf. Consequently, Police Department Notification No. 44 of 1937 in so far as it does not leave the power of punishment of Sub-Inspectors to the authority by whom the appointment was made but purports to *delegate* to certain specified authorities the power of punishment including dismissal, is *ultra vires* of the Local Government. Where, therefore, a Sub Inspector of Police who was appointed by the Deputy Inspector-General of Police is prosecuted for an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, the previous sanction of the Local Government is not required under S. 197 (1), Cr. P. Code, for his prosecution, although Notification No. 44 of 1937 delegates the power of punishment of Sub Inspectors to the District Superintendent of Police and constitutes the Deputy Inspector-General of Police as the appellate authority. (*Mosely, J.*) TUN YA *v.* THE KING (1938) Rang. L.R. 104= 175 I.C. 442=10R.R. 505 (2)=39 Cr.L J. 614= A.I R. 1938 Rang 181.

——S. 32—*License given to take out procession—Procession led by accused not licensee—Accused disobeying order of magistrate—Liability to Conviction.*

A license was given to certain persons under S. 30, Police Act, to take out a procession. The procession was led by the accused who was not one of the licensees. Order had been given by the Additional District Magistrate to the procession to move faster while passing a mosque. The order met with deliberate disobedience by

POLICE REGULATIONS.

and was convicted, no reference being made about the license.

Held, ...

S. 32 ...

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order, ...

Monroe, J) BILAS RAI v. EMPEROR.

I.L.R. 1938 Lah 258 = 175 I.C. 5?? = 10 R.L. 750 = 39 Cr.L.J. ...

POLICE REGULATIONS—I ...

See CR P. CODE—POLICE REG ...

1938 A.W.R. (H.C.) 471 = A.I.R. 1938 All 534

POSSESSION.

See also (1) ADVERSE POSSESSION

(2) CO SHARERS.

(3) EJECTMENT

(4) LIMITATION ACTS; ART. 142 AND

In those cases the question is independent of such factors as length of time, the presence of recitals, or the

——*Person with title to major portion—If can maintain suit for possession of whole*

tain a suit to recover the whole land from the trespasser (*Yorke, J*) JAFAR ALI KHAN v. QAMARUNNISSA

174 I.C. 378 = 1938 R.D. 499 = 1938 O.L.R. 182 = 1938 A.W.R. (C.C.) 49 = 10 R.O. 251 = 1938 O.W.N. 454 = 1938 O.A. 346 = A.I.R. 1938 Oudh 119

——*Suit for, based on title—Compensation for improvements* bona fide *made by defendant—* ... *can claim in defence*

It is a settled principle that where the plaint... has the legal title sues to recover possession of l... the defendant, the Court will not a... recover except on terms of allow... sums of money which he had spent... provements, if the circumstances... defendant's favour (*M C Ghose and Mitter, JJ*) MAJDUDDIN v. LUNGLA SYLHET TEA CO

42 C.W.N. 110

POST OFFICE ACT (VI OF 1898), S. 52—*Ingredients of offence—Extraction of contents from parcel*

It is a necessary ingredient of the offence under S. 52 of the Post Office Act that some contents should be extracted from a parcel and not merely examined (*Horwill, J*) SATTAR KHAN v. EMPEROR.

1938 M.W.N. 962.

POWER-OF-ATTORNEY.

TION ACT, SS. 32 AND 33. A.I.R. 1938 Lah. ...

suretyship bond, mortgage or any other documents

authority to take the steps necessary to reduce an agreement, of which the principal had approved personally, to legal or formal shape, (*ii*) that it was not beyond the scope of the agent's power to enter into a Contract of *suretyship whereby his principal* became *surety for* himself, and that the principal could not repudiate such a ... ed to have acted ... other documents ... limit the words ... ough to give the ... on the princi- ... NDRA NATH v. ... 177 I.C. 715 = 2 C.W.N. 718 = ... 1938 Cal. 573.

——*Construction—Power to surrender shares—If includes power to refuse newly issued shares*

... be construed strictly, and ... rpreted in the light of the ... y include incidental powers ... the authority Where an ... was entitled. ... acted beyond the scope of his "surrender shares" were not ... shareholder to take up newly ... *dge, J*) EZEKIEL v. CAREW & CO., LTD I.L.R. (1938) 2 Cal 190 = A.I.R. 1938 Cal 423.

——*Construction—Rules of—Young girl executing power of attorney in favour of step-mother—Authority given to manage and also to sell and mortgage property—Authority to sell, if unqualified*

A power of-attorney must be construed as giving only ... for the proper ... here the plaintiff, ... cuted a power of- ... authorising her to manage her land, to realise rents and also to sell and mortgage the property.

Held that the power-of attorney was really given for management of the property of the plaintiff as she was married and was not in a position to look after the land and that there was no intention to give any general power to sell the land and that the step-mother was only authorised to sell the property when it was necessary for, the purpose of the management. (*Bhide, J*) MST. JAN v. MST. FAJJAN. 40 P.L.R. 59 = A.I.R. 1938 Lah. .

——*Termination—Principal just before leaving India empowering agent to act during his absence—Subsequent return and again leaving India—Agent's power to act.*

Where
ed a powe
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India and
before so leaving;

Held, that the power of the agent did not terminate and the agent had power to act for the principal during his absence (*Panckridge, J.*) EZEKIEL *v.* CAREW & CO. LTD. I L R (1938) 2 Cal. 190 = A I R. 1938 Cal. 423.

——Validity—Conditions—Execution and
cation *See* REGISTRATION ACT, S. 33.
1938 A.

——What is—Deed by Hindu reversioners ... of stranger—Authority given to latter to file suit for recovery of estate on behalf of all and provisions made for division of estate after recovery by suit—Effect of. *See* CONTRACT ACT, SS. 201 AND 202
(1938) M.W.N. 259.

PRACTICE

- **Adjournment**
- **Appeal.**
- **Appellate Court.**
- **Commissioners.**
- **Consolidation of Suits.**
- **Duty of Court.**
- **Evidence.**
- **Full Bench Reference.**
- **Issues.**
- **Judgment.**
- **Judicial notice.**
- **Leave to defend.**
- **Leave to sue.**
- **New plea.**
- **Parties**
- **Pleadings.**
  - *See* **Title—Pleadings.**
- **Privy Council.**
  - *See* **Privy Council.**
- **Procedure.**

——*Adjournment—Adjournment to produce witness—Discretion of Court.*

Where the Court refused to grant a further adjourn-
...
not be found and when he was undoubtedly an important witness,
to grant an
the witness
(*Bhide, J.*)
.L.R 763 =

——*Adjournment—Appellant'*
taken point clear.

Where the law is clear and the
the appeal argued, the fact that t
to appear on the ground of illness is no reason for adjourning the appeal to another date merely to swell the costs. (*Bomford, J M*) MAHADEO MALLAH *v.* RAM DAS MALLAH. 1938 R.D. 123 = 1938 A.W.R. 84 (B.R.).

——*Adjournment— Peremptory date for hearing—Fixing of—Duty of Court.*

Per *Nasim Ali J.*—It is desirable that before fixing a peremptory date for the hearing of a suit the Court should hear the parties in order to enable the parties to inform the Court what time should be necessary for enabling them to be ready with their evidence. The
peremptory date without
informing them through
erally further the ends of
Nasim Ali, JJ.) KAZI-
... MOKKAMALI MOLLA.
67 C.L.J. 516 = A I.R. 1938 Cal. 789.

——*Appeal—Appreciation of evidence by trial Judge—Interference.*

An appellate Court must attach due weight to the appreciation of the evidence by the trial judge who has had the advantage of seeing the witnesses. But when
...
... v. BASANGOUDA. 176 I C. 187 = 11 R.B. 25 = 40 Bom.L.R. 132 = A I R. 1938 Bom 304.

——*Appeal—Copy of lower Court's order not produced along with appeal memorandum—Procedure—Power of appellate to Court grant time for production—Failure to produce within time granted—Dismissal of appeal—Propriety—Subsequent production—Sufficiency—Power of Court, to admit appeal to hearing.*

Although a memorandum of appeal is incomplete for
...
the period of grace or to pass an order to the effect that the appeal is not admitted as being incomplete. It is not necessary that the appeal should be dismissed on that ground. If the required copy is subsequently produced, it will be open to the appellate Court to admit the appeal to hearing if the appellant satisfies the Court that the appeal is in time or to pass any other order which may appear suitable. (*Darling, S M. and Bomford, J.M.*) RAM BABU *v* SHYAM SUNDER.
1938 R.D. 78 = 1938 A.W.R. 63 (B.R.).

——Appeal—Discretion of lower Court — Wrong exercise of—Interference. *See* LIMITATION ACT, S. 5.
19 P.L.T. 309.

——Appeal—Discretion of trial Court—nterference—
...E, O. 9, R. 9.
40 Bom L R. 238.

... of trial Court—Dismissal of
... Commissioner's fee—Interference in appeal—If justified. *See* CR. P CODE, O. 17, R. 3. A.I.R. 1938 Sind 142.

——*Appeal—Document translated—Duty of High Court to rely on translation on record.*

The High Court in appeal when considering a document which has been translated must relay on the
...
ded for the Court of the Commissioner—Procedure—Commissioner, if can dismiss without notice for deficiency of Court-fee.

It is only as a matter of convenience that Collector are authorised to receive appeals which are intended for the Courts of Commissioner. The Commissioner could not dismiss the appeal without giving notice to the counsel to make good the deficiency in Court-fee. (*Darling, S. M. and Marsh, J. M.*) RAM CHARAN.

PRACTICE.

SINGH v. BHAGWAN DAS.
1938 A.W.R (B R) 237 (2)=1938 R D 660.

——*Appeal—Findings of fact—Decisions of Township Judges—Interfe...*

Per *Baguley, J.*— ... in England, or by the ... presided over by men ... who have had years of experience before they are appointed, have got to be dealt with on different lines from findings of fact arrived at perhaps by the Township Judges in Burma who may be appointed almost direct from the University. These Judges have not always the experience nor perhaps the ability of County Court Judges or High Court Judges, and their decisions on points of fact or the credibility of evidence can never be regarded as having the same weight as findings of the County Court Judges or High Court Judges. A I R. 1936 Rang. 5, Expl. (*Baguley and Sharpe, JJ*) MOHAMMAD HAJEE v. VEDNATH SINGH
1938 Rang L.R. 52=10 R.R ...

——*Appeal—New case, incons... Permissibility*

A plaintiff cannot be allowed to make out a new case in appeal entirely different from and inconsistent with that of his own case in the plaint N... allowed to adopt the case of the defend... wholly, and on that basis ask for reliefs those claimed in the plaint. Such a ... unfair to the opposite party as well as against law. (*Wassoodew and Thakor, JJ.*) KRISHNAJI v. KESHAV
39 Bom.L R. 1318

——Appeal—New plea—Application for declaration of rent under Agra Tenancy Act—Denial of relationship of tenant not raised in trial Court—Plea in appeal—If open *See* AGRA TENANCY ACT, S 123 (c)
1938 R D. 96

——*Appeal—New plea—Estoppel—If can be raised.*

... second appeal. (*Bhide, J*) ABDULLAH SHAH v MAHOMED YAKUB 178 I C 436=40 P L R 848=
A I R 1938 Lah 558

——*Appeal—New plea—If can be raised*

A plea which has not been raised in the pleadings should not be permitted to be raised in Appeal for the first time so as to enable the appellant to start a new case and take the respondent by surprise. (*Abdul Ghai and Singaravelu Mudaliar, JJ*) CHINAMMA NANJUNDA. 16 Mys L J 184
43 Mys H C R. 10

——*Appeal—New plea—Letters Patent appeal—Trial Court issuing second commission for local investigation—Plea that first Commissioner's report should be wiped off the record—If open for 1st time in Letters Patent appeal*

A contention that the Court issuing a second commission for a local investigation, should wipe out the first commissioner's report off the record and treat it as not evidence, is really not open and should not be raised for the first time in Letters Patent Appeal, as a matter of practice, when it was not raised in the Courts below. (*Courtney Terrell, C.J and Manohar Lall, J*) SHIB CHARAN SAHU v. SARDA PRASAD
172 I C 751=4 B R 164=10 R.P. 341=
18 Pat. L T. 837=1937 P W. N 862=
A I R. 1937 Pat. 670.

——*Appeal—New plea—Letters Patent Appeal.*

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When a question of law is raised for the first time in a Court of last resort, upon the construction of a document, or upon facts either admitted or proved ... nice questions of fact, in considering which the Court of ultimate review is placed in a much less advantageous position than the Courts below But that course ought not, in any case, to be followed, unless the Court is satisfied that the evidence upon which they are asked to decide establishes beyond doubt that the facts, if fully investigated, would have supported the new plea. In a suit for declaration that the charge created by the guardian *ad litem* of the minors to secure postponement of the decretal amount in favour of the decree-holder was null and void against the plaintiff, the case set up was one of collusion and fraud. The matter up to ... sion and fraud In the Letters Patent Appeal the plaintiff wanted to question the guardian's power to execute ... the security ... which the ... enable the ... other, the plaintiff could not be allowed to raise it. (*Mya Bu and Sharpe, JJ.*) A R. M N A CHETTYAR v R. M V. S. CHETTYAR. 1938 Rang L R 256=177 I C 673=
11 R R. 143=A I R 1938 Rang 236.

——*Appeal—New—Plea based under S 43, T P. Act, not raised in trial Court—If open in appeal*

It is not necessary for a party to plead law, and a new point of law, as for example, S. 43, Transfer of Property Act can be raised in appeal though not raised (*Barlee and Macklin, JJ.*) VITHA-
I L R. 1938 Bom 155=
...=10 R B. 524=40 Bom L R 147=
A.I R 1938 Bom 223.

——*Appeal—New plea—Objection as to frame of suit*

Where a suit is brought under O 21, R 63 by a defeated claimant to declare his right to attach certain property after setting aside a transfer as having been made with a view to defeat creditors and no objection to the frame of suit (i e) as not being of a representative character, had been raised in the trial Court, but which ... ich an ... Court. ... PRA ... 148=
1937 O W N 1169=A I R 1938 Oudh 33

——*Appeal—New plea of marz ul-maut—If open.*

The plea of *marz ul maut* involves a question of fact and when taken for the first time in appeal, the other side is sure to be prejudiced and so ought not to be allowed to be raised at that stage (*Niamatulla Ag.C. J and Verma, J.*) TUFAIL AHMAD v UMME KHATOON 174 I C 465=1938 A L R 287=
10 R A 584=1938 A W R 1 (H C)=
1938 A L J 16=A I R. 1938 All. 145.

——*Appeal—New plea—Plea as to maintainability of suit—Suit for injunction—Plea in appeal that plaintiff being out of possession cannot maintain suit—If can be raised*

A plea that a suit for injunction is not maintainable on the ground that the plaintiff was out of possession on the date of filing the plaint, which was not raised in

PRACTICE.

the trial Court and which obviously depends on facts for which evidence would be necessary

for the first time in appeal. (*Sir G*

SECRETARY OF STATE *v.* KUCHIW

STONE CO., LTD 172 I C. 44:

65 I.A. 45=17 Pat. 69=... 42 C W N. 593=1938 A L J 72= 1938 A W R (P.C) 19=1938 P.W N 1= 1938 O.L R. 25=1938 A L R. 25=4 B R 198 (2)= 1938 M.W N 145=1938 O.W N. 158= 1938 R.D 214=66 C L J. 485=10 R P C 130= 40 Bom L R 292=1938 O A 281= 18 Pat L T. 1001=A.I.R. 1938 P C. 20 (P.C)= (1938)1 M L J. 209.

——*Appeal—New plea—Point o... construction of document or upon fa... ved— Plea that stipulation in mortg... clog on redemption—If can be raise... appeal*

Even when a question of law, is raised for the first time in appeal upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient, in the interests of justice, to entertain the plea. A plea that a stipulation in a mortgage deed amounts to a clog on the equity of redemption may be allowed for the first time

... A I.R 1938 Mad. 405.

——*Appeal—New plea—Point of law requiring the taking of fresh evidence and necessitating remand—*

t, though for the of fresh

DAN. 177 I.C. 461=11 1938 M.W N 523=A.I R 193

——*Appeal—New point—Plea that mortgage being* lahan gahan *no decree for sale is permissible—Permis-*

has proceeded there on the basis that t was a type which enables either a decree foreclosure being passed.

Quaere—Whether a *lahan gahan* mortgage comes within the definition of a mortgage by conditional sale. (*Stone, C.J. and Digby, J.*) BHAGWANTRAO *v.* DAMODAR. I.L.R. 1938 Nag. 91=20 N L J 285= A I R 1938 Nag. 112

——*Appeal—New point—Point not raised as issue or investigated by trial Court and on which no evidence is adduced—If can be raised in appeal.*

A point which has not been investigated by the trial Court and upon which the parties did not go into any

PRACTICE.

issue and did not lead any evidence from which any safe

DHARY *v.* C. G ATKINS. 175 I C. 279= 4 B R 565=10 R P. 597=1938 P.W.N 177= 19 Pat.L T. 95=A.I.R. 1938 Pat 189.

——Appeal—Right of withdrawal—Permission to withdraw—Power of Court to grant. *See* C. P CODE, S. 107 AND O 23, R 1. 40 Bom L R. 895.

——*Appellate Court—Interference—Credibility of witnesses—Opinion of Judge sitting on original side of High Court*

record the demeanour of the witness (*Mya Bu and Sharpe, JJ.*) RORKE *v.* RORKE. 177 I C. 312= 11 R.R. 114=A.I.R. 1938 Rang. 248.

——*Appellate Court—Interference—Credibility of witnesses—Opinion of trial Court.*

Where the Court below has had the advantage of noticing the demeanour of witnesses and has given reasons for rejecting their testimony, the appellate ...rily disagree with the Judge of the ...s estimate of the evidence of the ... *and Ismail, JJ*) GOPI NATH *v.* CHAMELI. I.L.R. 1938 All. 741= 1938 A.W.R. (H C) 517=1938 A L J. 773= 177 I C. 815=1938 A L R. 781=11 R A. 223= A I.R 1938 All 504.

——*Appellate Court—Interference—Discretion of trial Court.*

It is a well established rule of law that in matters which lie within the discretion of the trial Court the

1938 O A 938.

——*Appellate Court—Powers—Fresh period to make*

...al must have jurisdiction ...nt for the trial Court to do. ...ordered that *A* should pay ...within a certain period on ...ld stand dismissed and *B* ...before that period ...dismissed *A's* suit ...the decision of the ...sh period to pay up the amount to *B.* (*Niyogi, J.*) MT ANUPA BAI *v.* BHAGWANT SINGH. I.L.R. 1938 Nag. 535= A I.R. 1938 Nag. 470.

——*Appellate Court—Powers—Interference—Appeal from final decree in partition suit—Nature and scope of—Grounds of interference—Principles—If same as second appeal—Findings of fact—Finality.*

A trial Court which makes a final decree in a partition suit considers the report submitted by the Commissioner—who has gone to the spot, heard the parties and

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their evidence and has effected the partition having regard to the nature of the land and other circumstances—and reviews the facts and corrects the award of the Commissioner. The power to review the decision of the Commissioner on the facts is a matter for that Court and its view of the facts ought to be final as first appellate decision on fact. A first appeal to the High Court from the final decree in a partition suit is really in the nature of a second appeal in which only questions of law and principle can be considered, and the High Court can only interfere when it is shown that the trial Court in its decision has gone wrong on some question of principle in making the final allotment and in drawing up the decree. (*Courtney Terrell, C.J. and S. C. Chatterji, J.*) JUGESHWAR SINGH *v.* RIJHAN SINGH. 17 Pat. 81= 174 I.C. 147=4 B.R. 393=10 R.P. 483= 18 Pat L.T. 932=A.I.R. 1938 Pat. 104

[illegible]

such surrounding facts as make it impossible to accept the finding of the Judge (*Lord Wright*) HUKUM CHAND SARUPCHAND *v.* HANSRAJ HARJI 174 I.C. 875=1938 O.L.R. 273=10 R.P.C. 300= 4 B.R. 599=1938 A.L.R. 407= (1938) 2 M.L.J. 966 (P.C.)

——*Appellate Court—Recovery of deficit Court fee payable in lower Court—Desirability of early action* [illegible]

It is desirable that where the [illegible] deal with the question of recover[illegible] payable by the appellant in the [illegible] the matter should be dealt with a [illegible]

[illegible]

OSMAN AHMAD 1938 O.W.N. 1138= 1938 O.L.R. 499=1938 A.W.R. (C.C.) 131= 1938 O.A. 917

——Application for probate—Letters of administration—If can be granted. *See* SUCCESSION ACT (XXXIX OF 1925. A.I.R. 1938 Lah. 349

——*Commissions—Local investigation—Second Commission—Issue of—Grounds—Duty of Court*

Where local investigation of a piece of land is essential and the report and map prepared by a commissioner are found by a Court unsatisfactory, the Court should issue a fresh commission. (*Agarwala and Chatterji, JJ.*) DEB NARAIN KUNDU *v.* AMRITA LAL 177 I.C. 156=4 B.R. 795=11 R.P. 132= A.I.R. 1938 Pat 421

——*Consolidation of suits — Parties belonging to same family— Dispute as to partition—Similarity in matters in issue— Consolidation—Refusal—Interference in revision*

Where the parties to different suits are descendants of a common ancestor and the one question which related to all suits was the existence or otherwise of a partition, it is a fit case for consolidation Where a lower Court refuses to consolidate in a proper case, it could set aside in revision (*Varma, J.*) RAMAVTAR PRASAD VERMA *v.* SATDEO LAL 177 I.C. 799=5 B.R. 21=11 R.P. 182 (2)

——*Conversion of revision into appeal*

A right of appeal is not an inherent right, and the circumstance that the statute by which a case is governed does not allow an appeal is no justification for allowing a revision application to be converted into an appeal (*Weston*) MANGI LAL *v.* GOPI NATH 1937 A.M.L.J. 107.

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——*Discretion—Interference on appeal—If justified.*

The question of interest *pendente lite* and future interest is entirely within the discretion of the Court and Court of appeal will not interfere with the discretion exercised by the trial Court merely on the ground that reasons for the award or refusal to award such interest have been given. (*Manohar Lal and Chatterjee, JJ.*) HEMANGINI DEVI *v.* ANIL KRISHNA. 1938 P.W.N. 186=19 P.L.T. 202= 17 Pat. 350=A.I.R. 1938 Pat. 600.

——*Duty of Court—Appealable cases—Duty of lower Courts to give findings on all important points.*

The lower Courts in appealable cases should, as far as may be practicable, pronounce their opinion on all important points. Their failure to do not infrequently obliges the superior Courts to remand a case which may otherwise be fully settled on appeal (*Dhavle and Manohar Lal, JJ.*) NRISINGHA CHARAN NANDY *v.* TRIGUNANAND JHA 17 Pat 507=177 I.C. 564= 4 B.R. 841=11 R.P. 161=1938 P.W.N. 818= 19 P.L.T. 309=A.I.R. 1938 Pat. 413.

——Duty of Court—Duty to avoid appearance or imputation of bias—Judge's competency to decide case when he is debtor of one of the parties. *See* JUDICIAL OFFICERS—DUTY OF. 40 Bom L.R. 904.

——*Duty of Court—Grant of relief on proof of facts stated—Rejection of application* in limine*—Propriety.*

A Court is bound to adjudicate upon the facts stated [illegible] that the application is made to harass and [illegible]ity (*Courtney Terrell, C.J.*) MAHABIR PROSAD PODDAR *v.* [illegible] 16 Pat 724=172 I.C. 737= 4 B.R. 161=10 R.P. 339=18 Pat L.T. 839= 1937 P.W.N. 865=A.I.R. 1937 Pat. 665.

——*Duty of Court—Hearing of case at end of working hour after pleader has left Court—Propriety—Material irregularity.*

Pending execution of a decree, the judgment-debtor filed an objection under S. 47 C. P. Code, alleging that the decretal amount had been adjusted and only a portion of it was due This objection was proceeded with and the inquiry was adjourned on several occasions On some occasions the decree holder filed hazri showing that he was going to contest the alleged adjustment put forth by the judgment-debtor Ultimately the objection was taken up for hearing on a certain date at about 4 30 p m which was usually the last hour for the Court to sit. At that time the pleader of the decree-holder had left the Court on the understanding that no new case would be taken up. The Court heard the objection *ex parte* and allowed it

Held, that even if the pleader was not told by the Court that no new case would be taken up, he was justified in acting upon the supposition that no new case would be taken up at 4-30 p m The Court acted with material irregularity in hearing the objection *ex parte* at the end of the working hour of the Court

Held further that as the decree holder had filed hazri on several occasions showing that he was going to contest the adjustment mere failure to file hazri on a particular date did not show that he was in any way negligent. (*Mohamad Noor, J.*) SURAJMAL BADRI DAS *v.* MANBODH BHAGAT LALL CHAND RAM. 174 I.C. 1007= 4 B.R. 501=10 R.P. 563=A.I.R. 1938 Pat. 204.

——*English law—Importation—Matter governed by Indian statute.*

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(Per *Niyogi, J.*) On a matter which is governed by the express provisions of statute law in force in India, it may be dangerous to import the considerations borrowed from English law. (S
GOPALRAO v. DEVIDAS.
174 I C. 148=10 R.N.

——*Evidence—Apprecia...*

The evidence on record has to be appreciated with reference to the pleas and previous statements and con

only arise, if a Court finds the evidence *pro* and *con* so

Bartley, JJ.) PRATUL CHANDRA BHADURI v. PURNA CHANDRA BHADURI 175 I C. 610= 10 R C. 812=66 C.L.J. 324=A I.R 1938 Cal 284

——*Evidence—Plea as to insanity of person giving evidence—When open*

Where a plaintiff to a suit is adjudged to be sane at the date of the suit and he has not challenged that finding but continued the litigation as sane it is not open to him to argue that he is an alleged lunatic at the stage when evidence was to be given. (*Puranik, J.*) MST HAZRABI v. MST. FATMABI 177 I C. 80= 11 R N. 103=A.I R. 1938 Nag. 204.

——*Evidence—Witness—Legal Practitioner as witness—Desirability.*

A counsel is not incompetent to give evidence whether the facts to which he testifies occurred before or after his retainer. As a general practice it is undesira-

A.I R. 1938 Lah. 204

——*Evidence—Witness not summoned—If ground*

summoned is no
evidence is not
, *JJ.*) JOTI LAL
176 I C. 129=
4 B R 682=11 R.P. 51=A.I R. 1938 Pat 281.

——*Full Bench—Motion for reference—If can come from counsel.*

The motion to refer a matter to a Full Bench should normally come from the Judges themselves and not from counsel when they find that they are fettered by a decision in a previous case which appears to them to require further consideration. When the authorities upon a proposition of law are plain and straightforward, it is not for counsel to argue, what is in effect a against an authoritatively decided case, by a Bench to adopt the machinery laid down by which a Full Bench hearing can be obtained. *C.J. and Sharpe, J.*) A.B. NEOGI v. B. B. NEOGI. 174 I C.188=10 R R. 391=A I R. 1938 Rang 43

——*Issues—Duty of Court to raise—Plea that plaintiff has inflated claim to file suit in higher Court—Specific issue on point—Necessity for.*

Where the defendant alleges that the plaintiff has inflated his claim in the plaint in order to bring his suit

JJ.) KHIOMAL v. GOPALDAS. 175 I C 684= 11 R S. 5=A.I.R. 1938 Sind 121.

——*Judgment—Hotly contested suit—Duty of the*

admitted

pos
MS

——Leave to sue—Estate in possession of ... Court—Suit for possession of—Leave of Court—Necessity. *See* C. P CODE, O. 40, R. 1.
19 Pat L.T. 35.

——*New case—Court's power to make out.*

It is not within the judicial duties of a Judge to raise a case not raised by the party himself and to decide it for him. (*Davis, J.C. and Mehta, J.*) ARAB JHANGLU v. PANJAL SHAH. A I.R. 1938 Sind 198.

——*New case in second appeal—No conceivable defence open to new case—Avoidance of multiplicity of proceedings.*

ground of claim is
hich no conceivable
where multiplicity of
e avoided, the right
claim to be put for-

——*New case—Second appeal—Suit by plaintiff in individual capacity—Conversion into representative suit—Permissibility.*

A plaintiff who brings a suit as the sole proprietor of a certain village site cannot, in second appeal, be permitted to convert his suit into a representative one on behalf of the proprietary body. (*Bhide, J.*) CHANDGI v. ADLI. 40 P.L.R. 630.

——*New plea—Objection of misjoinder raised for the first time at argument stage after adducing ev-*
on suit—
le and ad-
necessary

Where a party to a suit does not raise the objection that he is not a necessary party to the suit at the earliest possible stage of the suit, he cannot be allowed to turn round, at a late stage of the suit after the evidence has

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been recorded and findings given, and get over the effects of the decision by pleading that he was not a necessary party to the suit. Nor the trial Court nor an appellate Court is justified in upholding such a plea. In a suit for redemption on a mortgage some defendants who were made parties as being in possession of some items of mortgaged property set up in statement paramount title to the property adverse possession, but they never raised tl suit pos or t the at on the question of title. In appeal the appellate Court without considering the merits of the case held that they were not necessary parties to the suit and dismissed the suit as against them.

Held, in second appeal, that the objection raised at such a late stage could not be entertained or considered and that the lower appellate Court erred in giving effect to the same. (*Nagesuara Iyer and Singaravelu Mudaliar, JJ*) GURUSANTHAPPA *v* YELLAPPA.
16 Mys.L J. 1 = 42 Mys H C.R 645.

——*New plea—Plea not set up in pleadings—If can be allowed to be set up.*

A party cannot be all in the pleadings and to suit for ejectment, the statement that he is the should not be allowed to set up a case that he is a licensee which he has never pleaded, and claim immunity from ejectment on that ground. (*Mahomed Ismail, J.*) MAHOMED HASAN *v* BUDDHU
172 I C 973 = 10 R A 445 = 1938 A L R 60 = 1937 A W R. 1085 = 1937 A L J 1297 = A.I.R. 1938 All 32

——New plea—Suit for arrears of rent by one only of several co sharers—Plea that suit not maintainable—When to be raised. *See* AGRA TENANCY ACT, S. 256
1938 A.W.R (B R.) 105 = 1938 R D 169

——Order as to security in Probate or administration matter—Discretion—Power of appellate Court to interfere *See* SUCCESSION ACT (XXXIX OF 1925) S 291
174 I.C 421 = A I R 1938 Rang. 67

——*Parties—Partnership—Suit for dissolution and accounts —Necessary parties — Non joinder of all partners—Effect—Objection to maintainability of suit on ground of non joinder raised in written statement —Plaintiff not taking steps to implead all partners but contesting suit on issue of non joinder—Dismissal of suit—Propriety.*

A plaintiff suing for dissolution and accounts of a partnership must implead all the partners as defendants It may be that he is not aware of the number of partners at the time of filing the suit, if additional partners had been taken it without his knowledge, but when the defendants impleaded by him raise the plea of non maintainability of the suit on the ground of non-joinder of all the partners he can ascertain the correct number and can implead the parties left ou no such trouble, but contests the sui has only to thank himself if the that ground. It may not be neces the partners in a case where the liability of the defendants is joint as well as several. But where the liability is the liability of the individual partners and of the partnership, and not jointly of the various members constituting the partnership, no suit is maintainable without impleading all the partners. (*Horwill, J.*) PARASURAMA IYER *v*. SUBBURAMACHARI.
175 I C. 290 = 10 R.M. 761 = 1937 M W N 1189 = A.I.R. 1938 Mad. 151.

——*Parties—Suit by defeated claimant to set aside decision of certificate officer—Officer who made the*

11 B P. 180.

——*Parties—Transposition—Setting aside safeguarding of rights.*

Where a respondent has been transposed as an appellant before the time for appeal has expired, it is inequitable to treat him, when the transposition is set aside and after he has allowed the time to appeal to pass, as a person against whom the decree has become final by reason of his not having appealed. (*Stone, C. J. and Puranik, J.*) MULJI SICKKA & CO *v*. NURMOHAMMAD.
A.I R 1938 Nag. 377.

——Pleadings *See* PLEADINGS.

——Privy Council. *See* PRIVY COUNCIL

of ob- issues —PRO- J. 337

——Probate Court—Equity by—Scope of. *See* WILL—PROBATE COURT, A I R. 1938 Rang 251.

——Probate Court—Province of—Validity and effect of provisions will have to be determined in proceedings for the construction of the will *See* WILL—PROBATE COURT.
66 C.L J 337

——Probate proceedings—Jurisdiction of Court to decide questions of title etc. *See* SUCCESSION ACT, S. 218
A.I.R 1938 Nag 173.

——*Procedure—Change in—Pending proceedings—Effect on—New procedure—If to be followed.*

The procedure to be followed in pending cases, when a new procedure is prescribed by law, should be according to the new procedure so far as it is applicable and not according to the old procedure (*Mahomed Noor and Chatterji, JJ.*) VISHWANATH NARAYAN SINGH *v* HARIHAR GIR
178 I C 279 = 5 B.R 73 = 19 Pat L T 760 = 1938 P W N 765.

——*Procedure—Connected suits - Evidence in both treated together without consent of parties—Propriety.*

A Court would be committing an error if it treats the evidence in two suits together, when the parties have not agreed to the evidence in one case being treated as evidence in the other and the suits have not been consolidated. (*Bhide, J.*) RATI RAM *v*. SHERA RAM.
40 P L R 990.

——Procedure—Contentious proceedings—Summary disposal—If justified—Duty of Court to make full inquiry as in regular suit *See* SUCCESSION ACT, S. 295.
(1938) 1 M L J 443.

application—Presentation ourt hours on last day of valid presentation *See*
A I R 1938 Nag 46

——Procedure—Local inspection—Object and scope of—Judge making enquiries of people present as to rights of parties and basing decision thereon—Propriety of. *See* C P. CODE, O. 18, R 18
48 L W 595
(1938) 2 M.L J.

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——*Procedure — Party bound to go into witness-box not doing so till late stage—Refusal by Court to allow him to go at late stage—Effect.*

Where a person should have been the first witness to go into the witness-box, but did not do so and desires to go into the witness box at a late stage, and the Court in its discretion refuses to allow him at that stage, there is no irregularity in the procedure adopted. (*Davis, J C. and Mehta, J.*) VIRANBAI *v.* PARMANAND JHANGALDAS. A I.R. 1938 Sind 206

——Procedure Permanent Trust created by ill—Removal of Trustee—Procedure under S. 92, C. P. Code *See* SUCCESSION ACT, S. 301.

1938 A.L J. 124=1938 A.W.R. 97 (H C.)

——Procedure—Question of jurisdiction—Decision as preliminary issue by Judge—Finality—Right of successor in office to re open at later stage of suit—Proper stage for re-consideration. *See* C. P. CODE, O 14, R 2

No ... ask for cancellation of decree—Propriety—Proper Course—Duty of Court—Power to direct amendment of plaint necessitating payment of additional Court fee.

Petitioner filed a suit for a declaration that a certain decree was not binding on him and paid a Court fee of Rs. 471 7-0. The plaint was returned to him with an endorsement stating, *inter alia* that since the plaintiff was a party to the decree ought to be declared not binding, the suit should be valued under S 7 (IV A) of the Court Fees Act, and the requisite Court fee paid. The plaint was re presented with a statement that it was not necessary for the plaintiff to sue for cancellation or setting aside of the decree and that the Court fee paid already was sufficient. The Court after hearing arguments passed an order that the plaintiff should sue for cancellation of the decree, and subsequently the plaint was returned to the petitioner "for necessary amendments", giving him 7 days time. There was no order by the Court rejecting the plaint for non payment of the deficit Court fee.

Held, in revision, that the procedure adopted by the Court was not fair to the litigant, in that the order returning the plaint "for necessary amendments" compelled the party to accept the view of the Court as to the Court fee payable, if he did not so accept it he lost his right of appeal. The proper course was to require payment of deficit Court-fee within a particular time, and, if such payment was not made, to reject the plaint, thus giving the plaintiff right to appeal against the order of rejection of the plaint. There ... plaint for setting aside any decre... ration in respect of the decree f... Court-fee had been paid, it was ... the Court to insist on the plaintiff ... necessitating the payment of add... Court's power to direct amendment of plaints should not be exercised for the purpose of imposing a burden on the plaintiff which he is not willing to accept. (*Pandrang Row, J*) RACHAPPA *In re.* 47 L.W 523=

176 I C 928=11 R M. 196=1938 M W.N 453=
A.I.R 1938 Mad. 645

——*Relief—Abandonment of claim —Inference—Claim to damages made in plaint and issue raised—Plaintiff adducing no evidence on question—Absence of material suggesting postponement of trial of such issue or agreement between parties to that effect—Inference—Power of appellate Court to award damages.*

Where a plaintiff claims damages in his plaint and an issue is raised on the point but the plaintiff adduces no evidence on the question of damage, and there is nothing in the record to suggest that the trial of the issue was postponed or that there was any agreement between the parties to that effect the proper inference to be drawn is that the claim for damages has been abandoned. An appellate Court cannot in such a case award any damage. (*Sir George Lowndes.*) SECRETARY OF STATE *v.* KUCHIWAR LIME AND STONE CO., LTD. 172 I.C. 443=47 L.W. 3=

18 Pat.L T. 1001=65 I.A. 45=17 Pat. 69=
32 S L R. 276=42 C.W.N. 593=1938 A.L.J. 72=
1938 A.W.R. (P.C) 19=1938 P.W.N. 1=
1938 O L.R. 25=1938 A.L R 25=4 B.R. 198 (2)=
1938 M.W.N. 145=1938 O W.N. 158=
1938 R D. 214=66 C L J. 485=10 R.P.C. 130=
40 Bom L R. 292=1938 O.A. 281=
A.I.R. 1938 P C. 20=(1938) 1 M.L.J. 209 (P.C.).

——*Relief—Claim made not proved—Right to relief* ...

respect of property found to have been dedicated for the use of the whole Brahmin community as such of the place and not for the use of the plaintiffs alone, alleging that the property belonged to the plaintiffs alone and was dedicated for their exclusive use.

Held, that the Court was not precluded from granting the relief which they were entitled to get as members of the Vadagalai community though their title as claimed in the plaint was denied and negatived. (*Venkataramana Rao, J*) T. P. RENGA IYENGAR *v.* RAMANUJA JEER SWAMIGAL. A I.R 1938 Mad. 270.

——*Relief—Defendant cutting earth from the tank-bank in plaintiff's tenure—Suit for possession on ground of dispossession—Competency—Proper remedy.*

Where in a suit for possession of a tabedari tenure, the dispossession alleged against the defendant is that he cut earth from the bank of a tank which is the subject-matter of the tenure, that does not give rise to an action for possession but merely to an action in trespass against the defendant in which the plaintiff can recover damages and in which the question of title can be gone into. To have a decree for possession is not an appropriate remedy. (*Wort, J*) NARAIN SINGH *v.* BAIKUNTH SINGH. 174 I C 168=4 B.R 388=

10 B.P. 486=1938 P.W.N. 558=19 Pat.L.T. 246=
A.I.R. 1938 Pat. 375.

——*Relief—Plaintiff not proving facts constituting his cause of action—Decree on proof of different set of facts—Permissibility.*

... all the same on proof of a different set of facts which the defendant had no opportunity to controvert, and which did not form the subject matter of any issue in the trial Court. The plaintiffs came to Court for a perpetual injunction to the effect that the defendant had no right to build on the land in dispute on the sole ground that the land in dispute had been reserved for public purposes, and that by taking possession of this land the defendant was depriving them of the use of land on the occasions of marriages and deaths. This fact was denied by the defendant, and it was stated that another piece of land had been reserved for common purposes for use on the occasions of marriages and deaths. The defendant produced evidence to show that another piece of land

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had been reserved for use for public purposes. The land was found to be part of shamilat abadi and the plaintiffs were granted the injunction

the condition of the joint property without the consent of all the co-sharers it would have been open to the defendant to plead that there was a custom in the village allowing a proprietor to make exclusive use of a part of the shamilat abadi land so long as the area of land appropriated by him did not exceed the area that would fall to his share on partition As the only ground

the case and the plaintiffs' suit for injunction should be dismissed (*Coldstream, Monroe and Abdul Rashid, JJ.*) INDER SINGH *v* BHANA.
175 I C. 412 = 10 R L 710 = A.I R 1938 Lah 296 (S B).

——*Relief—Possession—Suit for—Decree for joint possession—Whether can be granted.*

prayer does not necessarily involve the plaint being dismissed. A decree for joint possessic
nature as a decree for possession b
lesser extent and there will be no
decree other than the one asked for
nature In granting a decree for
siderations such as the danger of
ceedings have really nothing to d
interests of the parties *inter se.* (
v. MAUNG PAN. 177 I C .

——*Relief—Promissory note—Absence of name of payee or inadmissibility in evidence—Claim on original loan—Right to decree.*

A person is entitled to recover his claim on the original loan when the suit on the handnote fails either because the payee is not mentioned or because the handnote is not admissible in evidence, provided that a proper case has been made out in the plaint or the plaint has been amended to state the facts necessary in support of the claim. (*Agarwala and Rowland, JJ.*) KESHO DAS *v* HARI KISHUN DAS. 17 Pat 268 = 1938 P W N 431 = 175 I C 354 = 4 B R 580 = 10 R.P 620 = 19 Pat L T
A I R 1938 Pat

——*Relief—Suit on forged accounts—Decre*
admitted amount—Power to pass

Where a suit is brought on the basis of a forged bahikhata, no decree can be passed even on the admitted sum due by the defendant (*Manohar Lall, J*) NAGINA RAI *v*
173

——*Relief—*
claim as heir of
and setting up mortgage—Cases of neither plaintiff nor defendant proved—Plaintiff found entitled to possession of suit land on different contention—Decree for possession—If can be granted.

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In a suit for possession the plaintiff based his claim as the heir of the original owner and that he had leased the suit land to the defendant. The defendant denied the

Held, that the plaintiff should be given a decree for possession, and there was no need to refer the parties to another suit. (*Mosely, J*) MA PWA ZON *v.* MAUNG CHIT SAYA. 177 I C. 422 (1) = 11 R R 125 = A.I R 1938 Rang 213.

——Set-off—Equitable set-off—Promissory note—Agreement between payee and maker—Payment by

——Solicitor—Lien for costs. *See* LEGAL PRACTITIONER. 40 Bom L R 694.

——*Stay of proceedings—Commissioner completing enquiry into accounts before issue of Rule for stay—Subsequent submission of report—If without jurisdiction.*

Where before a Rule was issued by the High Court
ints, the Com-
and there was
mit his report,
Rule issued by
of jurisdiction
) KESHABJI
LALJI *v.* PIRAMALL GAYENKA. 42 C W N 405 = 67 C.L J 521.

of proceedings—
—Failure to appear

the stay order vacated and the parties are aware of the same, the date following to which the proceedings stand adjourned in the trial Court becomes effective and the parties are bound to appear before the trial Court on such date If any of the parties fail to appear on such a date the Court will be justified in proceeding *ex parte* against such party (*Stone, C J and Puranik J*) ABDUL RASHID ABDULLA KHAN *v.* MINHAZUL HASAN 175 I C 897 = 11 R N. 15 = A I.R. 1938 Nag 173.

——Subsequent events—Relief on ground of—Right to—Suit by Hindu daughter in law against father in
quired pro-
legal repre-
by death
NDU LAW—
MAINTENANCE—DAUGHTER IN-LAW 48 L W 706.

——*Subsequent events—When can be taken notice by the Court*

ed, the Court cannot but take notice of the altered circumstances and decline to give the relief to which a party would be entitled before the change of circumstances. (*Pandrang Row and Venkataramana Rao, JJ.*) AN

PRACTICE AND PROCEDURE.

NAMALAI CHETTIAR v. SRINIVASARAGHAVA AIYANGAR. 1938 M.W.N. 75 = A.I.R. 1938 Mad. 293.

PRACTICE AND PROCEDURE—Leave to defend—Conditions. *See* MADRAS HIGH COURT ORIGINAL SIDE RULES. O. 7, R. 7 (2). 48 L.W. 431 = 1938 M.W.N. 996 = (1938) 2 M.L.J. 563.

PRECEDENTS—*Decision of division Bench of High Court—Duty of other division Benches—Division Bench not agreeing with former division Bench—Proper procedure—Differing decision without reference to Full Bench—Duty of other division Benches.*

Where a division Bench of the High Court does not agree with the decision of another division Bench of the same Court, it is its duty as a matter of construction to refer the matter to a larger Bench. If, instead of doing so, it disagrees with the view of the other Bench, other division Benches of the High Court, would be constitutionally bound to follow the prior decision of the first division Bench. (*Fazl Ali and Manohar Lall, JJ.*) MAHABIR DAS v. UDIT NARAIN VARMA. 17 Pat. 534 = 19 P.L.T. 570 = A.I.R. 1938 Pat. 613.

——*Privy Council's rulings—Duty to follow.*

It is not open to the Courts in India to question on principle enunciated by the Board, which must therefore be followed irrespective of the inconvenient and embarrassing results which may attend the application of that principle. (*Stone, C.J. and Niyogi, J.*) MST. DRAUPADI v. VIKRAM. 1938 N.L.J. 237 = A.I.R. 1938 Nag 423.

——*Revenue Courts—Preference of later to earlier ruling.*

A later ruling should take precedence of an earlier ruling on the same subject. (*Dobson, F.C.*) SULTAN MAHOMED v. KARAM ILAHI. 17 Lah.L.T. 31.

——*Statements unnecessary for ... Value of.*

Statements which are not necessary ... which go beyond the occasion and lay d... is unnecessary for the purpose in hand ... [illegible] ... tax authorities. (*Derbyshire, C. J., Khundkar and Mukherjea, JJ.*) MAHALIRAM RAMJEEDAS, *In the matter of.* 177 I.C. 255 = 11 R.C. 217 = A.I.R. 1938 Cal. 557 (S.B.).

——*Value of—Law quite clear on the question at issue.*

On a question on which the law is clear ... it is unprofitable to wander in quest of ... ples in the wilderness of decided cases, for, when the law is clear, the decided cases only seek to apply the law to the particular circumstances which are presented for consideration. In such cases it has only to be seen whether certain facts which are established attract the application of the undisputed and well-recognised principle. (*Niyogi, J.*) MT. ANUPA BAI v. BHAGWANT SINGH. I.L.R. (1938) Nag. 535 = A.I.R. 1938 Nag 470.

PRE-EMPTION—*Circumvention of—Sale cala-ably treated as mortgage—Proof of real nature of transaction—Evidence Act, S. 92, if a bar.*

The right of a plaintiff to pre-empt a transaction of sale cannot be defeated by mere collusion between the vendor and vendee and by giving to a transaction of sale the guise of a mortgage or that of a gift. It is the real nature of the transfer and not its form that would ultimately go to decide, as to whether a right to pre-emption arises. Further it is always open to a plaintiff in a pre-emption suit to prove by evidence the real nature of the transaction in question. S. 92 of the evidence cannot apply, as the plaintiff in such a suit is not a party to the document concerned. (*Iqbal Ahmad J.*) JAGDEO SINGH v. MAHABIR SINGH. 177 I.C. 463 = 11 R.A. 156 = 1938 A.L.R. 765 = 1938 A.W.R. (H.C.) 433 = 1938 A.L.J. 668 = A.I.R. 1938 All 513.

——*Fraudulent decree—Inclusion in price of amounts in fact due on mortgages.*

Where money is actually due under mortgages, there is nothing illegal in setting it off against the sale consideration payable to the vendors. Though parties might be conscious of the prohibitive effect the price fixed would have on the right of pre-emption, that could not make the transaction a fraudulent device. It may even be that the parties were anxious to prevent the pre-emptors from becoming co-sharers in the village. That fact will not by itself constitute fraud. (*Bennet and Ismail, JJ.*) GULZARI LAL v. MOHAMMAD SHAFI KHAN. 175 I.C. 140 = 10 R.A. 648 = 1938 A.L.R. 376 = 1938 A.W.R. 60 (H.C.) = 1938 A.L.J. 128 = A.I.R. 1938 All. 204.

——*Law to be applied in Berar.*

In Berar, all questions of pre-emption must be governed by the Berar Land Revenue Code and not by the Mahomedan Law on which the Code is in part based. But in matters upon which the Code is silent, reference may be made to the Mahomedan Law to elucidate them. (*Bose, J.*) JAINARAYAN v. BALWANT. 1938 N.L.J. 379.

——*Market value—Relevancy of question when actual price is ascertainable—Price higher than market value—If vitiates sale deed or justifies reduction of sale consideration.*

... the property in... arise, where it ... price. Where it ... not the actual ... happens to be ... the market value of the property, would ... the sale deed nor justify a Court in ... considera tion. (*Bennet and Ismail, JJ.*) ... v. MOHAMMAD SHAFI KHAN. 175 I.C. 140 = 10 R.A. 648 = 1938 A.L.R. 376 = 1938 A.W.R. 60 (H.C.) = 1938 A.L.J. 128 = A.I.R. 1938 All. 204.

——*Nature of right—Enforcement—Requirements.*

[illegible] ... lished. (*Iqbal Ahmad, J.*) DURGA SINGH v. GIRWAR DUTT. 174 I.C. 836 = 1938 A.L.R. 346 = 10 R.A. 636 = 1938 A.L.J. 125 = 1938 A.W.R. 96 (H.C.) = A.I.R. 1938 All. 191.

——*Price—Initial onus—Suit failing—Inability to ascertain price paid—Duty of Court—Ascertainment of market value.*

In a suit for pre-emption the initial burden lies on the plaintiff to show that the consideration entered in the sale deed is not the real consideration. When this is once done, the onus lies on the vendee to prove the actual amount of sale consideration. If from the evidence the Court is unable to find out the actual price paid, it has to ascertain the market value of the property in suit and give plaintiff a decree conditional on the payment of that amount. (*Iqbal Ahmad, J.*) RAFIQ ZOHRA v. NISAR HUSAIN. 1938 A.W.R. (H.C.) 602 = 1938 A.L.J. 975.

PRE-EMPTION.

——*Right of—Benami sale by ... having superior right—Effect of.*

A right of pre-emption cannot be d... by the vendee to a person having ...

... [illegible] and clothing himself with a status equal to that of the pre-emptor's at any time before the decision of the pre emptor's suit, the pre-emptor has no preferential right at the time of the passing of the decree and his suit cannot succeed. The fact that the vendee acquires such status after more than one year from the date of the sale which the plaintiff seeks to pre-empt is immaterial 16 Lah 921 foll (*Coldstream and Din Mohammad, JJ*) JALLU *v.* SHAHU

I.L.R (1938) Lah 93 = 40 P L R 1035.

——*Right of—Vendee transferring property to person claiming equal or superior right—Effect.*

If before the institution of the suit, the original vendee transfers the property to a person claiming a right equal or superior to that of the pre emptor, the pre emptor cannot legally oust him. A pre emptor in order to succeed in his claim must not only possess a superior right at the time of the sale but must retain the superiority on the basis of which he claims to pre-empt also at the stage of the suit and the stage of the decree (*Din Mohammad, J.*) HARBHAGWAN DAS *v.* PRATAP SINGH.

40 P.L.R 97 = 177 I.C 674 = 11 R.L. 352 = A I.R 1938 Lah 242

——*Right to—Fictitious sale to defeat creditors—Plea in defence of open—Third party's rights not affected—Estoppel, if any.*

In a suit for pre emption, it is perfectly open to the defendant's vendor and vendee to plead and prove, that the sale in question was only a fictitious one got up with a view to protect the property from the claims of certain creditors and as such it could not give rise to a claim for pre-emption There can be no estoppel in such a case when the interest of no third person has intervened ... can the mere fact of the institution of a suit f... emption estop the vendor and vendee from pleadin... proving the real nature of the transaction ... *Ahmad, J*) DURGA SINGH *v* GIRWAR DUTT

1938 A L J 125 = 1938 A W R. (H C.) 96 = 174 I C 896 = 1938 A L R 346 = 10 R A. 636 = A I R. 1938 All. 191

——*Suit for—Court determining market value of property—Forum of appeal.*

If in a pre emption suit the Court determines the ...

... *purchaser, a co sharer—Plaintiff not having a preferential right.*

In a suit for pre emption it is open to an ostensible vendee under the sale deed to plead and prove that he was only a mere benaminar for a co sharer against whom the plaintiff has no preferential right of pre-emption and ...

Ahmad, J. ...

19 ...

PRESY. S. C. C. ACT (1882), S. 26.

...

——*Transfer, nature of—Sale or exchange—Determination as to—Tests to be applied—Fixing of value of property transferred—Effect.*

The difference between sale and exchange is that sale ...

... ration or dispossession of the property sold, can recover the price paid and damages, while in the case of an exchange, the person dispossessed has at his option a right for the return of the thing given by him, if it is available The mere fact that the value of the property transferred has been fixed, does not convert the transaction into one of sale when it really is one of exchange. It is not the name or form of the transaction, but the nature of the consideration paid for the transfer which determines the nature of the transfer itself. If the consideration for the transfer is not paid in cash, but is paid by transfer of the ownership of some property, it would be only an exchange and not a sale (*Bennet, A. C J. and Ganga Nath, J.*) RAM BADAN LAL *v.* KUNWAR SINGH

175 I C 618 = 10 R A. 715 = 1938 A L R. 467 = 1938 A L J. 52 = 1938 A.W R (H C) 86 = A.I.R 1938 All. 229.

——*Waiver of right—What amounts to—Waiver by manager of joint Hindu family—If operates as a waiver by all.*

When property is offered to a pre-emptor for sale before a definite contract of sale with any other person has come into existence, and such person has refused to purchase the property or intimated his intention of not ...

I L R (1938) Lah 246 = 176 I C. 925 = 11 R.L 247 = 40 P L R 10 = A I.R. 1938 Lah 273

PRESCRIPTION.

See (1) ADVERSE POSSESSION
(2) LIMITATION ACT, S 28, ARTS. 162 AND 144
(3) EASEMENTS ACT, S. 15

...

... mentioned in S 6 of the Presidency Small Cause Courts Act, and apart from that section, it is doubtful whether the High Court was intended to have any power of judicial superintendence over the Presidency Small Cause Court (*Lort Williams, J.*) MAHOMED YUSUF *v* ABDUL MAJID

I L.R (1938) 2 Cal 162 = ... N. 602 = A.I R 1938 Cal 671.

... *compensation—Power of High*

PRESY. S. C. C. ACT (1882), S. 38.

Where the Small Cause Court in dismissing a suit has not awarded compensation to the defendant under S. 26 of the Presidency Small Cause Court, it would be wrong on principle for the High Court in revision to interfere and pass an order for compensation although in its opinion it is a fit case for awarding sation. (*Ameer Ali, J.*) M. S. C SAHEB IQBAL SINGH.

——S. 38—*Jurisdiction of Full Power to interfere or order retri- amendment of plaint.*

The Full Bench of the Presidency Small Cause Court exercising its powers under S. 38 of the Presidency Small Cause Courts Act is not a Court of appeal and cannot therefore arrogate to itself the pc appellate Court. Its jurisdiction is merely nature, and it can only interfere when it

could have arrived at the conclusion to which judge has arrived. In no other circumstanc Full Bench interfere with a finding of fact, retrial be ordered unless the trial has been

may necessitate a further re hearing or reconsideration. It has no powers to order an amendment of the plaint, but it can order a retrial if an amendment setting up a new and inconsistent case is allowed by the trial Court. (*Abdur Rahman, J.*) DURAISWAMI IYENGAR *v.* RADHAKRISHNA CHETTY. (1938) M W N. 542= A.I R. 1938 Mad. 669.

——S. 38—*Scope—Order under O. 21, R. 2, C. P. Code.*

To fall within the scope of S. 38 an order must not

contested there should be nothing in the nature of a appeal against the order disposing of it. But it would be quite illogical to make the right to appeal against orders made in execution proceedings dependent upon whether the suit had been contested or uncontested An le, therefore the decision under S. 38 (*Panckridge,*

A I R. 1938 Cal. 862.

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), S. 8—Aggrieved party—Official Assignee—Application for delivery of property and for committing to prison for contempt wife and son of insolvent— Refusal—Appeal. *See* LETTERS PATENT (MADRAS), CL. 15. 48 L W. 462= (1938) 2 M.L J. 609

——S. 8 (2)—*Person aggrieved—Third person whose title to property is affected by adjudication—Right of appeal.*

PRESY. TOWNS INSOL. ACT (1909), S. 11.

A third person whose title to property is affected by an adjudication order is a person aggrieved by it and is entitled to appeal from it. But he is not entitled in any appeal under Cl. (2) of S. 8 to succeed on the basis merely of absence of notice by the Insolvency Court

when he had no means of knowing of the existence of the proceedings in which that order was passed against him. (*Davis, J. C. and Lobo, J.*) BHAWANIDAS *v.* JETHSING. 32 S L R 672=175 I C 214=

vent under the Insolvency law is one of vital importance.

a Court within the se of creating an act ULAM HUSSAIN *v.* I R. 1938 Sind 220.

——Ss. 9 (e) and 11—*Construction—Foreigner carrying on business through agent in Bombay—Decree against—Attachment of property for not less than twenty one days in execution—Debtor not resident in Bombay during attachment—Jurisdiction of High Court to adjudicate insolvent*

The Court cannot treat a man as a debtor within the meaning of the Presidency Towns Insolvency Act unless he is either a subject of British India or has committed or suffered within British India an act of insolvency. A

mont, C. J. PRATAPGIR

——S. 9 Expl —*Joint Hindu family firm—Act of insolvency by manager.*

Where members of a joint Hindu family carry on partnership business and if the elder member of the family who is also the managing partner of the firm makes a fraudulent transfer of the firm property to pay a debt due by the firm, the act of insolvency constituted by the transfer is an act of insolvency on the part of the other partners also as the managing partner is an agent within the meaning of Explanation to S. 9 (*Davis, J. C. and Lobo, J*) BHAWANIDAS *v.* JETHSING.

32 S L.R. 672=175 I.C 214=10 R S 291= A.I.R. 1938 Sind 82.

——S 11 (b)—*Railway servant staying during week ends in rented room in Calcutta—If has dwelling-house in Calcutta.*

——S. 12—*Petition by creditor—Existence of debt—Proof required.*

A creditor presenting an insolvency petition against a debtor must prove the existence of a debt of Rs. 500 or upwards not only at the time when the petition is presented, but at the time of the hearing of the petition and at the moment of time immediately prior to the making of an order of adjudication. (*Costello, A C.J. and Edgley, J.*) AHMAD MAHOMED PARUK *v.* PRAPHULLA NATH TAGORE. I L R (1938) 1 Cal. 13

——S. 13 (4) (b)—*"Sufficient cause"— Deposit, before adjudication, of amount of debt due to petitioning creditors.*

A deposit by the debtor before the date of adjudication of the whole of the amount of debt due to petitioning creditors is not a "sufficient cause" within the meaning of S 13 (4) (*b*) so as to refuse an order of adjudication. (*Davis, J C. and Lobo, J*) BHAWANIDAS *v.* JETHSING. 32 S L R 672=175 I C 214=10 R S 291=A.I R. 1938 Sind 82.

——S 17—*Applicability—Suit to enforce personal claim against insolvent—Leave of Court—N*

There is no warrant for holding that Presidency Towns Insolvency Act applies ceedings against the property of the insolvent and that therefore no leave of the Court is necessary for commencing a suit to enforce a personal remedy against an insolvent. There is no doubt a distinction between the language employed in the section on the one hand, and that employed in the corresponding sections of the English Bankruptcy Act and the Provincial Insolvency Act on the other, in that S. 17 of the former Act refers only to remedies against the property of the insolvent, while the latter Acts refer to remedy against the property or person of the debtor. But the latter portion of S. 17 relating to "suit and proceedings" is quite general, and having regard to the principle underlying the section, there is no justification for drawing a distinction between

——S. 17—*Order of adjudication—Vesting of pro-*

Act, in an Official Assignee in India immovable property of the insolvent in Burma (*Braund, J*) *In the matter of* MOTILAL PREMSUKHDAS 1938 Rang L R 166=178 I C 46=A I R 1938 Rang 324.

——S. 17—*Scope and effect—If absolute bar to execution of decree—Period of pendency of insolvency proceedings—If deductible in computing limitation for execution—Provincial Insolvency Act, S. 78 (2)—Application of.*

S. 17 of the Presidency Towns Insolvency Act is not an absolute bar to execution of a decree. Leave to

contains no provision similar to the one enacted by S. 78 (2) of the Provincial Insolvency Act, and the equitable rule contained in S. 78 (2) of the latter Act cannot therefore be invoked in the case of an insolvency under the Presidency Towns Insolvency Act. (*Newsam, J*) KRISHNAMACHARIAR *v.* HAJEE SALAY MAHAMMAD SAIT. 1937 M.W N. 1182.

——S. 17—*Scope—Suit by creditor under S. 53, T. P. Act, for declaration of invalidity of trust deed executed by insolvent prior to adjudication—Leave of insolvency Court—Necessity.*

A suit by a creditor of the insolvent on behalf of himself and all the other creditors of the insolvent for a declaration that a deed of trust executed by the insolvent prior to his adjudication in favour of himself and his relations is void against his creditors under S. 53, T. P. Act, is a suit which falls within the general prohibition enacted in S. 17 of the Presidency Towns Insolvency Act, and is not maintainable without leave of the Insolvency Court. (*Beaumont, C.J. and Wassoodew, J*) GANPATRAO *v.* JEHANGIR. 40 Bom L R 935=

42 C W N. 695.

——S 31 (1)—*'Person interested'—Assignee from one of two joint creditors—Proof of claim put in by creditors not admitted by Official Assignee*

An assignee of a joint debt from one of the two joint creditors of the debtor whose proof of claim was never formally admitted by the Official Assignee is not a 'person interested' within the purview of S. 31 (1) of the Presidency Towns Insolvency Act, and he is not, therefore entitled to apply to the Court for the re adjudication of the debtor and annulment of the scheme of composition. (*Costello, A J C and Edgley, J.*) AHMAD ALI *v.* ABDUL KASEM FAZLUL HUQ.
I L R (1938) 1 Cal. 493.

himself But it would be an undesirable and unwar-

OF MADRAS *v* SURYAKANTHAMMAL
175 I C 543=10 R M 790=46 L.W 900=1937 M W N 1251=A I R 1938 Mad 175
(Reversed on appeal (1938) 2 M L J 609)

(*See* S 58, PRESIDENCY TOWNS INSOLVENCY ACT)

——S. 43—*Effect of—Acts of insolvent subsequent to discharge—Validity.*

Although under S. 43 it is the duty of the discharged insolvent to assist the Official Assignee in the realization of his property, this does not mean that acts done b

——**S. 115**—*Copy—Meaning of—Copy of notes of insolvent's public examination—Right of Official Assignee to such copy without charge—Insolvency Rules (Calcutta), R. 204.*

Under S. 115 of the Presidency Towns Insolvency Act, copy means a copy necessary under the provisions of some law, or rule having the force of law, for some step in the administration of the insolvent's estate. This test is not satisfied in the case of a copy of the notes of the insolvent's examination under S. 27 of the Act required for the purpose of taking steps to have a deed of settlement executed by the insolvent set aside. The Official Assignee is therefore not entitled to obtain such a copy without charge under S. 115 and he is liable to pay the fee prescribed by R. 204 of the Insolvency Rules (Calcutta). (*Panckridge, J.*) OFFICIAL ASSIGNEE OF CALCUTTA, *In the matter of.* **42 C.W.N. 1146= A.I.R. 1938 Cal. 755.**

——**S. 115 (1)**—*Copy of notes of insolvent's public examination—If copy of proceedings before Court.*

A copy of the notes of the insolvent's examination under S 27 of the Presidency Towns Insolvency Act is a copy of proceedings before the Court within the meaning of S 115 (1) of the Act. (*Panckridge, J.*) OFFICIAL ASSIGNEE OF CALCUTTA, *In the matter of* **42 C.W N. 1146=A I.R. 1938 Cal 755.**

——**S. 125**—*Matter covered by S. 115—Power of Court to prescribe fee.*

S. 125 of the Presidency Towns Insolvency Act does not give the Court power to prescribe a fee in respect of a matter covered by S. 115 of the Act. The purpose of S. 115 is clearly to save as much as possible of the insolvent's estate for distribution amongst the creditors (*Panckridge, J.*) OFFICIAL ASSIGNEE OF CALCUTTA, *In the matter of.* **42 C.W N :' A.I R. 1938 (**

PRESS (EMERGENCY POWERS) ACT \' OF 1931), S 2 (6)—*'News sheet'—Meaning of— Leaflet containing matters of historical interest and information and comment on current topics.*

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als.

HUDA *v* EMPEROR. **I L.R. (1937) 2 Cal 670= 174 I C. 393=10 R C 672=39 Cr L J 446= A I R. 1938 Cal. 222.**

——**S. 4 (1) (h)**—*Applicability —Promotion of enmity or hatred.*

A riot between Indians and Burmans was followed by two articles in a newspaper The articles pointed out that the facts recited in the articles were already of common knowledge One of the articles contained a version of the incidents of the riot and the reasons that led up to the riot The second article pointed out that

The article did not "tend to promote feeling of enmity or hatred between different classes of His Majesty's subjects", and therefore did not come within the scope of Cl. (*h*) of S. 4 (1). Regarding the second article, it was held that Indian bad characters were not a "class of His Majesty's subjects", as contemplated by Cl. (*h*) of S. 4 (1) and the article was directed against them only. Even if the article fell within the scope of Cl. (*h*), it came within Explanation 4, and therefore could not form the basis of an order under S. 7 (3). (*Mya Bu Offg. C. J., Ba U and Dunkley, JJ*) MAUNG PO HNYIN, *In the matter of.* **178 I C. 438= A.I R. 1938 Rang. 417 (S B.).**

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890), S. 3 (a)—*Prosecution under—Determination of preliminaries and publication in Gazette—If conditions precedent to maintainability*

In a prosecution on a charge of overloading under S. 3 (*a*) of the Prevention of Cruelty to Animals Act, it is not competent to the Court to acquit the accused without hearing any evidence on the ground that the preliminaries required under Ss. 1 and 2 of the Act are not shown to have been made or done These requirements are not necessary for determination of the case on the merits. The fact that the Local Government have not determined the maximum weight to be carried by animals, and that the District Magistrate's orders have not been published in the Local Gazette cannot render the prosecution incompetent. (*Pandrang Row, J.*) PUBLIC PROSECUTOR *v* RANGAN **48 L.W 382=1938 M W N. 912= A.I R. 1938 Mad. 949=(1938) 2 M.L J. 659.**

PRINCIPAL AND AGENT—*Accounts—Suit for—Basis of right.*

A suit for account is founded on the right of the from the other party. f the parties are in a ıer (*Vivian Bose, J*) **176 I C. 675= 11 R.N. 65=A I R. 1938 Nag 254**

——*Accounts—Suit for—Decree in favour of agent—*

R 1932 Lah. 619, HI RAM *v* DULA R 1938 Lah. 723.

There is a well marked distinction between the relation of agency and that of trust But agency may often involve a relation of trust and confidence, and property in the hands of an agent may sometimes be impressed with a trust for the benefit of the principal, and an agent may not in such circumstances set up the statute of limitation in bar of a suit for accounts by the principal. (*Biswas, J*) KALI PADA DE *v* HARI DASI DASI. **I L R. (1938) 1 Cal 652=A I R. 1938 Cal 673.**

——*Agent's remedy—Suit for accounts—When competent*

an agent's re- alings which are be aware of the the accounts of by an agent for t be competent. the agent claims he only form in for the specific *an, J*) RAMACHANDRA MADHAVADOSS CO. *v* MOIDUNKU **177 I C. 631=11 R.M. 362=1938 M.**

PRESY. TOWNS INSOL. ACT (1909), S. 43.

him subsequent to his discharge are rendered thereby invalid, but only that in some circumstances the discharge may be revoked. An order of conditional discharge is not a
(*Roberts, C.J. an*
CHOTALAL.

——S. 45 (1,
—*Executor failing to account for money received by him —Inference from.*

If an executor fails to account
into his hands, it must be inferr
fraudulent breach of trust in the
assumed that he has applied it to his own use That being so, he is not released from his liability to make good that money under S. 45 (1) (*b*) of the Presidency Towns Insolvency
vency. (*Panckridg*
v. HIRALAL MONI

——S. 49 (1) (*a*)— *Debt due to Crown or local authority*"—*Meaning of*

The expression "a debt due to the Crown or to any local authority" includes not only a debt which has become due to the Crown but also a debt which is provable within the meaning of S. 46 (3), whether such demand has become provable or not and whether it is in point of law strictly a debt or not. (*Rupchand Bilaram, J C.*, SECRETARY OF STATE *v* OFFICIAL ASSIGNEE
174 I C 157=10 R S. 243=
A.I.R 1938 Sind 49.

——S. 52 (1) (a)—*Applicability—Executor not having at time of insolvency specific cash or chattels belonging to testator.*

S. 52 (1) (*a*) of the Presidency Towns Insolvency Act does not apply to a case where an executor does not have in his hands at the time of his insolvency any specific cash or chattels representing the estate of the testator. Where, therefore, the executor had already mixed the money representing the estate of the testator with his own money and it eventually became dissipated and is impossible to trace, S. 52 (1) (*a*) has no application. (*Panckridge, J.*) DULAI CHANDRA GORAI *v.* HIRALAL MONDAL. 42 C.W.N. 965.

——S. 52 (1) (a)—*Book entry by insolvent firm crediting certain sum to deity as charity—Money con-*

charity does not constitute the firm trustees for the deity in respect of that sum which is continued to be used by the firm in its business as before. Consequently on the insolvency of the firm the deity is not entitled to payment of that sum in full. (*Sir George Rankin.*) SOONIRAM *v* ALAGU NACHIYAR. 42 C W.N. 1125=
1938 O L.R. 395=176 I.C. 906=48 L.W. 466=

PRESY. TOWNS INSOL. ACT (1909), S. 86.

——S. 55—Burden of proof under. *See* PROVINCIAL INSOLVENCY ACT, S. 53. 40 Bom.L.R. 884.

——S. 56—*Fraudulent preference — Transfer in*

dence of any threat of any criminal proceedings or any

32 S L R. 672=175 I.C. 214=10 R S 291=
A I.R. 1938 Sind 82.

——S. 58—*Scope—Powers of Court to commit for*

but other persons who deliberately aid the insolvent in defying an order of the Court deliberately passed in the exercise of insolvency jurisdiction. The Court's powers are not limited by S 58 of the Presidency Towns Insolvency Act. The wife and son of the insolvent, though

SURYAKANTHAMMAL 48 L W. 462=
A I R. 1938 Mad 627=(1938) 2 M L J 609
(Reversing 46 L W. 900=1937 M.W.N. 1251.)

——S. 58 (5)—*Scope—Agent of insolvent obstructing delivery of immovable property of insolvent sold by Official Assignee — Contempt proceedings—Maintainability*

S. 58 (5) of the Presidency Towns Insolvency Act is restricted to a refusal of an agent to hand over money and securities belonging to the insolvent. This does not cover the persistence of an agent of the insolvent in obstructing the delivery of the immovable property of the insolvent which has been sold by the Official Assignee. There is no provision in the Act enabling contempt proceedings against the agent of an insolvent for such obstruction. (*Wadsworth, J*) OFFICIAL

——S. 86 and Sch. II, R 25 —*Adjudication of claim by Official Assignee—Appeal to Judge—Proper form—Evidence, if should be taken before Judge*

A claim that certain property has not vested in the Official Assignee at all or a claim to have a charge upon property which has vested in him cannot under the Presidency Towns Insolvency Act be dealt with by the

PRINCIPAL AND AGENT.

Subsequent changes in constitution of firm B—*If affect its liability to* G.

A, a firm ordered certain machinery from the firm *B* according to the specifications and estimates submitted by firm *B* According to the invoices, the firm was to supply certain machinery from their own stock with the prices fixed but the prices of the rest of the machinery

firm *B* to credit all advances made by firm *A* to the name of company *G* who also confirmed this and asked the

price actually paid to the suppliers.

Held, that the firm *B* acted as an agent with regard to the machinery the price of which were made subject to the fluctuations and acted as principal with respect to the machinery the prices of which were fixed.

Held, further, that the change in the firm *B* did not affect this relationship in the absence of notice to those dealing with it as the firm is an entity. The existing proprietor was therefore liable to render accounts.

Held also, that the firm *B* was also an agent of the

——*Relationship—Test*

The main test to determine whether a person selling goods supplied by other is his agent is whether he is supposed to be selling his own goods when the time for sale comes or whether he is supposed to be selling the goods of his principal, for the liability of an agent to render accounts is based on the assumption that he is

silent on this point

Held, that the latter was not ar

but only a favoured buyer.

CHAND *v* AGGARWAL BATTER... CO A I R 1938 Lah. 814.

——*Rights of agent—Delegation of power.*

The maxim *delegatus non potest delegare* is clear and

11 R Pesh. 39=A.I R 1938 Pesh 63

——*Rights of agent—Remuneration—If can make profits*

An agent cannot make profits as against his principal, but there is no law which says that he may not get remuneration from his principal. (*Baguley and Shaw*,

PRINCIPAL AND AGENT.

JJ.) DAW KYIN *v.* MA HLA YI.

176 I C. 909=11 R R. 89=A I.R. 1938 Rang. 71.

——*Rights of principal—Agent fraudulently disposing security deposited by principal—Principal not knowing of conversion receiving the very goods converted or equivalent—Effect.*

pal has vested in him a right to damages for conversion which would be measured by the value of the security

11 R.P C. 94=A I R. 1938 P.C. 23 (P.C.).

——*Suit for accounts—Agent entitled to share of profits—Interest on capital—If allowable.*

The ordinary rule of law as between partners or as between the principal and an agent who is paid for his services by a share of the profits of the business is that interest on capital is not to be charged in taking accounts unless there is some agreement to that effect. The agreement between a principal and agent provided that 'interest expenditure' was to be allowed before profit

——*Suit for accounts—Outstandings in respect of credit transactions on termination of agency—Agent's right to credit in respect of those assets*

Where on the date the agent left the business, particular outstandings arising out of credit transactions during the period of the agency were realizable assets, the mere fact that by reason of subsequent events, *i e.*,

agent is to be remune-

(*Varadachariar and*

RAMANIA IYER *v.*

A I R. 1938 Mad. 38.

——*Suit by principal for accounts—Maintainability—Accounts in possession of principal—Duty to make out* prima facie *liability of agent.*

An agent merely by handing over to his principal a set of account books is not absolved from the liability to explain them, but where the principal who is in possession of all the account books sues the agent for accounts, he is expected to disclose such particulars as will establish a *prima facie* liability of the agent to account. It is not open to any principal, who has got all the accounts of his agent in his possession to employ the machinery of the Court for examining his accounts on the off-chance of making his agent liable for any

47 L.W. 654=A.I.R. 1938 Mad. 707= (1938) 2 M.L.J. 112.

——*Agent's right to salary—Employment of agent for fixed term—Business proving unprofitable—Employment continued though agent absent from place of business—Principal's liability to pay damages for period of employment.*

A person was appointed as the agent of another for a period of three years at a certain salary. The employer finding tha

terminated

his period.

obtained o

absent for a

absence was

dispensed with.

ment

Held, that the

continued despite his absence and the employer took no steps to terminate his employment on the ground of absence. *Hamley* v. *Pease and Partners, Limited*, (1915) 1 K.B. 698, Rel. on. (*Leach, C.J. and Lakshmana Rao, J.*) SUNDARAM CHETTIAR *v.* CHOCKALINGAM CHETTIAR. 47 L.W. 803= 1938 M.W.N. 653=A.I.R. 1938 Mad. 672= (1938) 1 M.L.J. 857

——*Broker—Authority to deal with secu*

Stock-brokers in the ordinary course of

mor

of their custo

——*of principal—Duty to collect outstandings—Right to commission on collections*

collecting the outstandings, in the absence of any agreement or custom to pay such commission. (*King and Lakshmana Rao, JJ.*) KARUTHAN CHETTIAR *v.* CHIDAMBARAM CHETTIAR

48 L.W. 237=1938 M.W.N. 576= A.I.R. 1938 Mad. 725=(1938) 2 M.L.J. 79.

——*Duty of agent—Collection of outstandings for principal—Debtor in financial difficulty.*

The duty of a commission agent, collecting outstandings on behalf of the principal and paying them over, in a case where the third party, debtor to the principal, is financially embarrassed is to do his best to collect all he

can in the circumstances. It may be that it is more prudent not to press the debtor into immediate bankruptcy, but to take what he can in cash at the moment and to give time for the balance. No doubt an agent's authority is at least presumptively to settle in cash, in the absence of express authority to the contrary effect or of an authority by custom or usage. But where, the debtor being in financial difficulties, the agent gets all the cash he can and does his best to secure cash for the

(*Lord Wright.*) GOKAL CHAND 1938 A.W.R. (P.C.) 122= 178 I.C. 425=1938 O.L.R. 501= A.I.R. 1938 P.C. 292 (P.C.).

——*Liability of principal—Agent making offer beyond his authority—Principal, if liable for contract which agent has authority to make*

Acceptance of an offer made by an agent the terms of which are b

acceptor a

A.I.R. 1938 Cal. 423.

behalf of his principal and within the

pe of his authority binds the principal, un-

is in fact unauthorised to do that particu-

le person with whom he is dealing is aware

erest thereon on the due dates and also

the principal sums on the expiry of the

on a question whether the Bank could escape liability in respect of one of such deposits on the

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not only autho-

but there was

ng the deposits

rests and repay-

ositor that the

secretary was expressly authorised to receive the deposits in the manner in which he did and hence the Bank was liable in respect of such a deposit. (*Gentle, J.*) MATHIAS *v.* KILACHERI AGRICULTURAL CO-OPERATIVE BANK. 1938 M.W.N. 3=47 L.W. 88= A.I.R. 1938 Mad. 272=(1938) 1 M.L.J. 241.

——*Relationship—Firm A ordering certain machinery from firm B—Firm B supplying some machinery with prices fixed but rest subject to fluctuations of prices and its commission on actual prices—Firm A selling all machinery to company G with all rights under contract with firm B—Firm B informed accordingly—*

PROMISSORY NOTE.

plaintiff has formally and sufficiently proved that there was a stipulation for a fresh advance, but whether it is sufficiently shown by the other side that there was no consideration for the promissory-note. (*Sir George Rankin*) RAJA OF RAMNAD v. CHIDAMBARAM CHETTIAR. I.L.R. 1938 Mad. 646= 173 I C 772=42 C.W N. 565= 1938 A.W.R. (P.C.) 102=1938 O W N. 390= 1938 A.L.R. 239=1938 O L.R. 169=47 L W. 618= 1938 M.W N. 471=10 R P C 235=4 B R 415= 67 C.L J 241=32 S.L R. 448=40 Bom L.R. 767= 1938 A.L J. 292=A.I.R. 1938 P.C. 123= (1938) 1 M L J. 597 (P C.).

——*Original cause of action—Falling back upon—Permissibility—Promissory note found to be not genuine.*

A promissory note on which a suit was filed by a pardanashin lady was found to have been manufactured and not a genuine one. But it was found that money was actually due on previous transactions and that no transaction of loan had taken place at the time of the execution of the note.

Held, that the plaintiff was entitled to fall back upon the original loan (*Bennet and Ismail, JJ*) GOPI NATH v. CHAMELI. I.L.R. 1938 All 741= 1938 A.W.R. (H C.) 517=1938 A.L J. 773= 177 I.C. 815=1938 A.L.R. 781=11 R.A 223= A I R. 1938 All. 504.

——*Place of payment—Presumption—specifying any place.*

If a pronote does not specify any pla[illegible] ment is to be made, the presumption is [illegible] should be made at the place of residence [illegible] the creditor. (*Bhide, J.*) NANU MAL v. [illegible] NAND KISHORE. 40 P L R. 975

——*Right to sue—One of several promisees—If can sue alone*

One of several promisee under a promissory note is not entitled to sue alone without joining the other promisees, either as plaintiffs or defendants. (*Smith, J.*) RAM SINGH v. RADHA KRISHNA 172 I C. 542=1938 O L R. 13= 1938 O.A. 46=10 R O. 164=1938 O.W N. 148= A.I.R. 1938 Oudh 61.

PROVIDENT FUNDS ACT (XIX OF 1925), S 3 (1)—*Money to credit of undischarged insolvent in Provident Fund of District Council—Official Assignee, if can claim it*

Money to th[illegible] the Provident [illegible] pulsory deposit [illegible] Funds Act, unless and until the protection of S. 3 (1) has been extended to such fund by the Local Government. Before the extension of the protection to such fund, the Official Assignee has claim to such deposit (*Shaw, J.*) SOLOMON DAVID v THE KING. 176 I C 460=11 R R 65=39 Cr L J. 754= A I R 1938 Rang. 245.

——S 5—*Provident fund—If part of estate of deceased*

Provident fund [illegible] deceased's estate. [illegible]

——S. 5 (1)—[illegible] *Mode of cancellation* [illegible]

[illegible] ation has been varied in the manner indicated therein. It contemplates

PROV. INSOLVENCY ACT (1920), S. 4.

that the variation or cancellation is to be made by the subscriber himself and not by anybody after his death. Consequently, a will made by the subscriber varying his original nomination and despatched to the Provident Fund authority by the executor after his death, cannot have the effect of cancelling such nomination. (*Nasim Ali and Henderson, JJ*) SECRETARY OF STATE FOR INDIA v. NAGENDRA MOHAN DE. 42 C.W N. 1143.

PROVINCIAL INSOLVENCY ACT (III OF 1907), S 16 (4)—*Insolvency—Declaration of final dividend and termination of insolvency—Insolvent purchasing property more than 12 years later and enjoying same—Subsequent sale by him to wife—Application by creditor to annul and to make it available for distribution—Competency—Estoppel.*

The husband of the appellant was adjudicated insolvent on 30th January, 1915, under the Provincial Insolvency Act of 1907. The Official Receiver thereupon took possession of the estate, realized it and declared a final dividend sometime in 1915. The administration having thereby concluded, the Receiver sent to the District Court all the concerned papers relating to the insolvency, and the papers were duly destroyed under the rules for the destruction of records. The insolvent subsequently began earning monies and with such acquisitions he purchased a property in 1928, and remained in enjoyment of it till 1934, when he sold it to the [illegible]

was a nullity.

Held, that the conduct of the Receiver must have been within the knowledge of the creditors and the latter must therefore be regarded as having deliberately acquiesced in the position indicated by that conduct, namely, that the insolvency had become finally determin-[illegible]

must be regarded as a representation by them, and revive the insolvency for the purpose of challenging a sale *bona fide* made in the belief that there was no insol[illegible]

PROVINCIAL INSOLVENCY ACT (V OF 1920),—*"Debtor" and "insolvent"—Meaning—If synonymous.*

The lax use of the word "debtor" throughout the Provincial Insolvency has given rises to difficulties In many sections it is used as meaning the debtor, while in others it is used as meaning the debtor Strictly speaking, a debtor and an insolvent are different persons. An insolvent under the Act means a person [illegible]

[illegible] INSOLVENCY ACT, SS. 68 AND 4

PRIVY COUNCIL.

sum which on such examination may be found due from him. (*Fazl Ali and Chatterji, JJ.*) SHIVA PRASAD v. HANUMAN BUX 177 I.C. 133=4 B.R. 797=11 R.P. 131=A.I.R. 1938 Pat. 392.

PRIVY COUNCIL—*Concurrent findings of fact—Courts below not influenced by same considerations—Interference.*

——*Concurrent findings—Interference—Rule as to.*

Where it is a case of concurrent findings of fact, the whole question is one of fact, and under such circumstances, it is not the practice of the Board to go behind those findings It may be that, in exceptional cases, where it is clear that some serious injustice has or may be involved, the rule may be departed from, but that is so only in the most unusual circumstances. The rule is one which obviously it is of the utmost importance to

40 Bom L.R. 1063= A.I.R. 1938 P.C. 183 (P.C.).

——*Criminal appeal—Leave granted on certain ground—Other grounds, if can be argued.*

...tial Committee is not a Court of crimi... *Wright*)

1938 O...

193...

——*Finding of fact—Finding on question of malice.*

A finding on a question of malice is a finding in fact. The state of a man's mind is as much a fact as the state of his digestion. (*Lord Atkin.*) SABAPATHI v. HUNTLEY. 173 I.C. 19=1938 A.L.J. 179=10 R.P.C. 180=1938 A.W.R. (P.C.) 79=1938 P.W.N. 274=47 L.W. 409=A.I.R. 1938 P.C. 91 (P.C.).

PROMISSORY NOTE.

——Finding of fact—Interference—Local knowledge necessary for decision. *See* MORTGAGE—SUIT ON. 175 I.C. 457=A.I.R. 1938 P.C. 223 (P.C.).

——*Leave to appeal—Order imposing penalty for contempt.*

It is competent to His Majesty in Council to give leave to appeal and to entertain appeals against orders of the

open.

A new point obviously dependant on proof of facts and not merely a question of law, which has not been raised in the High Court. Where it could have been raised or in the application for leave to appeal or in the printed case before the Privy Council, cannot be raised for the first time before His Majesty in Council. (*Sir*

1938 R.D. 214=66 C.L.J. 485=10 R.P.C. 130=40 Bom L.R. 292=1938 O.A. 281=(1938) 1 M.L.J. 209 (P.C.).

...TICE.

...GIOUS PROCESSION.

...—*Duty of applicant—Absence of candour in statement of facts—Suppression of material facts—Forfeiture of right to invoke the powers of Court.*

...RT OF ...476=...385. ... *See* ...OURT ...N. 230.

Original cause of action.

Place of payment.

Right to sue.

——*Consideration—Proof—Part only proved as being towards a barred debt—No stipulation as to fresh advance proved—Effect.*

A promissory note having been given, consideration is to be presumed. The question then is not, whether the

plaintiff has formally and sufficiently proved that there was a stipulation for a fresh advance, but whether it is sufficiently shown by the other side that there was no consideration for the [illegible] *Rankin*) RAJA OF [illegible] CHETTIAR. [illegible] 1938 A.W.R. (P C) 102 = 1938 O W N. 390 = 1938 A.L.R. 229 = 1938 O L.R 169 = 47 L W. 618 = 1938 M.W.N 471 = 10 R P C 235 = 4 B R 415 = 67 C L J 241 = 32 S.L.R. 448 = 40 Bom L.R. 767 = 1938 A.L J 292 = A I.R. 1938 P C. 123 = (1938) 1 M.L J 597 (P C).

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Held, that the plaintiff was entitled to fall back upon the original loan (*Bennet and Ismail, JJ*) GOPI NATH v. CHAMELI. I.L R. 1938 All 741 = 1938 A.W.R. (H C) 517 = 1938 A.L J. 773 = 177 I C. 815 = 1938 A.L.R 781 = 11 R.A 223 = A I.R. 1938 All 504

———*Place of payment—Presumption—Pronote not specifying any place.*

If a pronote does not specify any place where payment is to be made, the presumption is that payment should be made at the place of residence or business of the creditor (*Bhide, J*) NANU MAL v. SHIBBA MAL-NAND KISHORE 40 P L R 975

———*Right to sue—One of several promissees—If can sue alone*

One of several promisee under a promissory note is not entitled to sue alone without joining the other promisees, either as plaintiffs or defendants. (*Smit* [illegible] RAM SINGH v. RADHA KRISHNA [illegible] 172 I C. 542 = 1938 O L R [illegible] 1938 O.A. 46 = 10 R O. 184 = 1938 O W.N. [illegible] A.I.R. 1938 Oud

PROVIDENT FUNDS ACT (XIX OF 1925) [illegible]

(1)—*Money to credit of undischarged insolvent in* [illegible] *vident Fund of* [illegible] *can claim it.*

Money to th[illegible] the Provident [illegible] pulsory deposit [illegible] Funds Act, unl[illegible] has been extended to such fund by the Local Government. Before the extension [illegible] fund, the Official Assignee [illegible] (*Shaw, J*) SOLOMON DAVI[illegible] 176 I C 460 = 11 R [illegible] C. L J [illegible] A I R. 1938 Rang. 245

———S 5—*Provident fund—If part of estate of deceased*

Provident fund and gratuity do not form part of a deceased's estate (*Lobo, J.*) MADU KRISHNA *In re.* 177 I.C 416 = 11 R S 61 = A I R. 1938 Sind 160

———S 5 (1)—*Original nomination by subscriber—Mode of cancellation—Will by subscriber varying such nomination sent to authority after his death—Effect of.*

S 5 (1) of the Provident Funds Act contemplates that the original nomination made by a subscriber will entitle the original nominee to receive the provident fund money absolutely until such nomination has been varied in the manner indicated therein. It contemplates that the variation or cancellation is to be made by the subscriber himself and not by anybody after his death. Consequently, a will made by the subscriber varying his [illegible] Provident [illegible] th, cannot [illegible] (*Nasim* [illegible]) SECRETARY OF STATE FOR INDIA v NAGENDRA MOHAN DE. 42 C.W.N. 1143.

PROVINCIAL INSOLVENCY ACT (III OF 1907), S 16 (4)—*Insolvency—Declaration of final dividend and termination of insolvency—Insolvent purchasing property more than 12 years later and enjoying same—Subsequent sale by him to wife—Application by creditor to annul and to make it available for distribution—Competency—Estoppel.*

The husband of the appellant was adjudicated insolvent on 30th January, 1915, under the Provincial Insolvency Act of 1907 The Official Receiver thereupon took possession of the estate, realized it and declared a final dividend sometime in 1915 The administration having thereby concluded, the Receiver sent to the District Court all the concerned papers relating to the insolvency, and the papers were duly destroyed under the rules for the destruction of records. The insolvent subsequently began earning monies and with such acquisitions he purchased a property in 1928, and remained in enjoyment of it till 1934, when he sold it to the appellant. In 1936, one of the creditors of the insolvent in the insolvency applied to the Court claiming that the appellant got no title under the sale and that the property should be applied and administered under the Insolvency Act, and the District Judge relying on S 16 (4) of Act III of 1907, held that the sale by the insolvent was a nullity

Held, that the conduct of the Receiver must have been within the knowledge of the creditors and the latter must therefore be regarded as having deliberately acquiesced in the position indicated by that conduct, [illegible]

———"*Debtor*" *and* "*insolvent*"—*Meaning—If synony-* [illegible]

[illegible] others it is used as meaning the debtor Strictly speaking, a debtor and an insolvent are different persons. An insolvent under the Act means a person against whom an order of adjudication has been made, a debtor is a person who has made himself amenable to adjudication but who has not yet been adjudicated (*Burn and Mockett, JJ*) MALLIKARJUNA RAO v. OFFICIAL RECEIVER, KISTNA [illegible]

———S [illegible] held by receiver under orders of Court *See* PROVINCIAL INSOLVENCY ACT, SS. 68 AND 4 A I R. 1938 Nag 320.

PROV. INSOLVENCY ACT (1920), S. 4.

——Ss 4 and 24—*Finding in enquiry under S. 24 that debt is fictitious—If* res judicata.

The summary enquiry under S. 24 of the Provincial Insolvency Act as to whether a debtor is entitled to present a petition has nothing to do with S. 4 of the Act, which section only comes into play after adjudication in disputes between the debtor's estate represent receiver and the claims of one or all of his Consequently, a finding in an enquiry under S. certain debt is fictitious is not final and does nc as *res judicata* under S. 4 of the Act. (*Addison and Abdul Rashid, JJ.*) SADHU RAM v. KISHORI LAL. I.L.R. 1938 Lah. 535=177 I.C. 217=11 R.L. 281=40 P.L.R. 316=A.I.R. 1938 Lah. 490.

——Ss. 4 and 53—*Powers of insolvency Court—Transfer by insolvent more than two years before his*

It is open to the Insolvency Court to try such questions or leave them to be decided by an ordinary Civil Court, if it chooses to do so. Where a transfer is made by a person more than two years before his adjudication as

I.L.R. 1938 Lah. 439=40 P.L.R. 1000=

——Ss. 4 and 56 (3)—*Real people's hands—Receiver's remu*

The words in S. 4 of the 'subject to the provisions of tl otiose, and one of the provision 56 (3) Before a receiver can must be shown to belong to th not, the receiver has no pi stranger in possession, he woul suit against him. Even on th under S. 4 of the Insolvency Act should be held to be tantamount to a suit under S. 53 of the T P Act, it would follow that such a suit would have to be in time when insolvency proceedings began and this would be six years under Art. 120 of the Limitation Act from the date of accrual of the cause of action. (*Gruer and Niyogi, JJ.*) GODBOLE v. MST. MANIBAI. 1938 N.L.J. 279=A.I.R. 1938

——Ss 4, 53 and 56—*Relative scope of— attack partition made more than two years insolvency.*

Ss 53 and 56 of the Provincial Insolvency A merely lay down a rule of substantive law or a rule of evidence favouring the Official Receiver jurisdiction upon a Court of insolvency, the operation of S. 4 of the Act. He which had taken place more than two yea date of insolvency, was held to be incap set aside under S. 4 of the Insolvency Act. (*Gruer and Niyogi, JJ.*) GODBOLE v. MST. NANIBAI. 1938 N.L.J. 279=A.I.R. 1938 Nag 546.

——S 4—*Scope—Annulment of transfer—Liability of transferee for mesne profits—Question as to—Jurisdiction of Court to inquire into.*

S. 4 of the Provincial Insolvency Act confers on the Court very wide powers, which are sufficient to enable the Court to inquire into the question as to the liability of a transferee of the insolvent for mesne profits of the property, on the transfer being annulled. Whether it

PROV. INSOLVENCY ACT (1920), S. 5.

should inquire into it or not is a matter for the discretion of the Court. (*Pollock, J.*) KISANLAL v DINAJI. 172 I.C. 573=10 R.N. 223=20 N.L.J. 271=A.I.R. 1938 Nag. 50.

——S. 4(1)—*Construction—"Or of any nature whatsoever"—Meaning—If includes all questions of what-*

vincial Insolvency f any nature whatead in conjunction with the earlier part of the section which refers to 'question whether of title or priority" and with the opening words of the section "subject to the provisions of this Act." In other words the phrase must be subject to the limitation of *ejusdem generis*, or to the limitation to orders not specifically provided for in the so as to section 1) of the J.) BUDHSEN v. ASHARFI LAL. 1937 A.L.J. 1071=I.L.R. 1938 All. 50=1938 A.L.R. 68=172 I.C. 997=10 R.A. 455=1937 A.W.R. 1068=A.I.R. 1938 All. 28.

Court to be fictitious in proceedings on an application by

title.

A purchaser preferred a claim to certain property on the basis of his purchase from the insolvent after the property was attached in execution of a money decree. That claim was not investigated but was dismissed for default. *It was held that as the order dismissing the* claim for default was neither final nor conclusive it was

A.I.R. 1938 Cal. 373.

that petitioner became entitled to debt under award of arbitrator subsequent to petition but within three months of petition—Maintainability.

The insolvency Court would not grant leave to amend an insolvency petition presented by a creditor if the effect of the amendment would be to introduce a debt which after the period of three months has elapsed, would not be a debt upon which the petition could be founded. But if within the period of three months a debt has been made a ground of the petition and it afterwards becomes desirable to add another party or to

PROV. INSOLVENCY ACT (1920), S. 6.

cure a mere defect or slip, the amendment will be allowed. An insolvency petition against a debtor was presented by a person describing himself as a creditor of the debtor and he found his petition on a debt due by the debtor to

. . . occurred on . . .

an award was made in arbitration proceedings between the petitioner and a third person who also claimed to be a partner in the firm, and as a result of that award the petitioner became solely entitled to the debt on which the petition was founded. Subsequently the petitioner applied, more than three months after the acts of insolvency, for leave to amend his petition by stating that the entire right to the debt vested in him by reason of the award.

. . .

Rule as to—*Coparceners incurring joint debt or obliga-*

. . .

sonal liability on other members of the family render impossible to treat any act of insolvency committed by him in relation to the affairs of the family generally as an act of insolvency committed by the other members of the family also. Consequently the joint Hindu family cannot as such be adjudicated insolvent; but two or more members of the family who have incurred a joint personal liability may present a joint petition in insolvency or may be proceeded against on one creditor's petition in case the joint act of insolvency can be brought *home to them* *Minor members must, however be ex*cluded in any case from insolvency proceedings started . . . (*Court* . . . AHABIR . . . R. 161 = 18 R P 399 = 18 Pat L T 839 = 1937 P W N. 865 = A I R 1937 Pat 665

——S. 6 (a)—*Trust-deed by debtor for benefit of creditors—Creditor not party to deed—If can avail of act of insolvency*

A creditor who is not a party to a trust deed executed by the debtor for the benefit of his creditors and to

. . .

——S. 6 (e)—*Sale in execution . . . insolvency—When occurs—Date of sal . . . mation.*

An act of insolvency in S. 6 (*e*) . . . Insolvency Act occurs when the property of the insolvent is sold in execution of a decree, and not when the sale is

PROV. INSOLVENCY ACT (1920), S. 16.

confirmed. (*Tek Chand, J.*) LAL CHAND *v.* BOGHA RAM. 40 P.L.R. 841 = A.I.R. 1938 Lah. 819.

——S. 10—*Grant of permission—Duty of Court.*

Under S. 10 of the Provincial Insolvency Act, it is

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tion for permission to bring a second application and *there has been no such finding by the Insolvency judge,* it cannot be presumed that the Court permitted the second application merely because it referred to the annulment of the previous adjudication in the subsequent order of adjudication. (*Almond, J C.*) GOPICHAND DUNICHAND *v.* HUKMAT KHAN. 10 R. Pesh 50 = 173 I.C. 650 = A.I R. 1937 Pesh 85 (1).

——S. 16—Locus standi *to apply—Creditor whose*

. . .

——S 16—*Object of—Prevention of injury to*

. . . solvency Act . . . of collusion

. . .

——S 16—*Order for substitution—When may be made.*

Where a petitioning creditor, who is a representative of the whole body of creditors, comes to an arrangement with the debtor and seeks not to prosecute his application any further, it cannot possibly be said that he is still proceeding with due diligence On the contrary there is a failure to proceed with due diligence in the highest degree. S 16 of the Provincial Insolvency Act does apply in such a case and an order for substitution should be made. (*Yorke, J*) SAGARMAL HANOMAN PRASAD *v* ABDUL RAHMAN. 173 I C 631 = 1938 O A 201 = 1938 O L R 125 = 1938 O W N 230 = 10 R O 225 = A I R. 1938 Oudh 101.

——S 16—*Substitution—Express order, if necessary—Inference from conduct of Court—Continuation of proceedings on application of creditor seeking substitution.*

An express order of substitution is not necessary under S 16 of the Provincial Insolvency Act, but substitution can be inferred from the Court continuing proceed-

. . .

substituted by another creditor and so on (*Thomas, C. J. Zia-ul-Hasan and Yorke, JJ*) RAGHURAJ SINC

v. ABDUL RAHMAN. 1938 O. A. 666 = 177 I.C. 392 = 1938 O.L.R. 417 = 11 R.O. 44 = 1938 O.W.N. 871 = A.I.R. 1938 Oudh 206 (F. B.).

——Ss. 20 and 56 (2) (b)—*Applicability—Order of adjudication—Appointment of receiver—Adjudication set aside on appeal—Effect—If makes receiver—Right to remuneration—If l*

Proceedings following an adjudicati invalidated merely because that order wards on appeal; and when a receiver ed on adjudication, he is entitled to be paid his remune-

ment of receiver under S. 56 into one under S. 20 or make him an *interim* receiver. The receiver quently entitled to his remuneration under S. 5 of the Act. (*Bose, J.*) LAXMAN PRASAD v PRASAD. 177 I.C. 650 = 11 R.N. 1938 N.L.J. 40 = A.I.R. 1938 Nag

——Ss. 21, 28 and 56—*Comparison of, powers conferred by—Recovery of property alleged to belong*

possession. a title, a Cou direct him t Court has to vent is entitle venient cours

——S. 24—Enquiry under—Finding that debt is fictitious—If *Res judicata*. *See* PROVINCIAL INSOLVENCY ACT, SS. 4 AND 24. 40 P.L.R. 316.

——S. 25 (1)—*Applicability "any other sufficient cause"—Dismissal of petition on statement by creditor*

of that section (*Beasley, C.J.*) RAMASWAMI IYER v. SUBRAMANIAN CHETTIAR. A.I.R. 1938 Mad. 267 = (1938) 2 M.L.J. 179.

——S. 25 (1)—*Burden of proof—Duty of creditor—Debtor's ability or inability to pay debts—Onus.*

debts. (*Burn and Venkataramana Rao, JJ.*) CHIN-

NAPPA REDDY v. VENKOBAYYA. (1938) M.W.N. 283 = 177 I.C. 627 = 47 L.W. 772 = A.I.R. 1938 Mad. 489.

——S. 26—*Applicability—Conditions—Frivolous or vexatious nature of petition—If to be decided at time of dismissal.*

26 of the dismissal sfied that Court can ation even though it did not do so at the time of the dismissal of tion under S. 25 (1). (*Beasley, C.J.*) RAMA-IYER v. SUBRAMANIAN CHETTIAR. A.I.R. 1938 Mad. 267 = (1938) 2 M.L.J. 179.

——S. 26—*'Debtor'—Meaning of.*

The word "debtor" in S. 26 of the Act means any one application has been person applying for com- need not in truth be a RAMASWAMI IYER v. A.I.R. 1938 Mad. 267 = (1938) 2 M.L.J. 179.

——S. 26—*Right to compensation—Petition when frivolous or vexatious.*

of the Act. It was found on evidence that the debt was

litor had and was it could ainst the efore no RAMA-

A.I.R. 1938 Mad. 267 = (1938) 2 M.L.J. 179.

——S. 27—*Time fixed for application for discharge—Power of Court to extend.*

A Court has jurisdiction to extend the time originally fixed under S. 27 of the Provincial Insolvency Act for

1938 O.A. 262 = A.I.R. 1938 Oudh 122 (F.B.).

——S. 27 (2)—Annulment proceedings—Power to keep pending. *See* PROVINCIAL INSOLVENCY ACT, SS. 35 AND 27 (2). A.I.R. 1938 Nag. 312.

——S. 28—*Applicability—Arrears of income tax*

all the property of the insolvent is vested. It cannot by

PROV. INSOLVENCY ACT (1920), S. 28.

virtue of the certificate issued under S. 46 (2) of the Income tax Act recover it by sale under the Land Revenue Act. (*N.J. Roughton, F.C.*) KIALCHAND DEVCHAND & CO LTD., *v.* DHUNDIRAJ GANESH. 1938 N L.J. 128.

——S. 28—*Hindu manager's insolvency—Debts due from manager brother—Shares of others, if vest in Official Receiver.*

In a joint Hindu family consisting of brothers, on the insolvency of the brother, who is a manager of the family, the shares of other brothers do not vest in the Official Receiver when such manager brother is adjudged insolvent for debts due personally from him. (*Jai Lal, J.*) KISHAN LAL *v.* LAL CHAND 177 I.O. 639 = 11 R.L 349 = A.I.R. 1938 Lah. 20.

——Ss. 28 and 59—*Scope and effect—Suit by insolvent after adjudication and pending insolvency—Maintainability.*

It is fundamentally opposed to all principles of insol-

WORKS. 40 Bom.L R. 956.

insolvency

Court is

(*Bhide,*

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been to se

vesting. As soon as the amount of a provident fund

reaches the hands of an undischarged

it ceases to be a compulsory deposit

attachment, and it becomes the absol

estate and the evidence of the purchaser showed that what was intended to be sold and purchased was the entire property for a consideration which represented the value of the whole property and not merely the insolvent's own half share after excluding the son's half share, and the Official Receiver had the power on that day to sell the son's share also.

Held, that it must be deemed that the power to sell the son's share was exercised by

and that the sale was of the entire p

Rao and Horwill, JJ.) RAMA RA

A.I.

PROV. INSOLVENCY ACT (1920), S 28.

——S. 28 (2)—*Order as to vesting—Rule to be observed.*

On *D* being adjudged an insolvent, one of *D's* creditors brought a notice of motion alleging that *D* had leased his fields on half produce rent and claiming attachment of the other half which was alleged to belong to *D.* The lessee alleged that the land was let on a rental basis and that he was entitled to all the crops The lease was found to be sham, and the lower Court passed an order to the effect that the estate was to get the whole produce.

Held, that the motion being moved on the basis of the fact that the lessee was entitled to half the produce it was not proper for the lower Court to pass an order which had the effect of bringing the whole of the produce into the estate and that the lessee was entitled to half the produce. (*Stone, C.J.*) RAMA YADO TELI *v.* DHEKAL JHANA TELI. 175 I O. 526 = 10 R N. 460 = A I R. 1938 Nag. 247.

——S. 28 (2)—*"Property"—Insolvency of Hindu*

on the insolvency of the father cannot avail himself of

nd the attachment

(*Pandurang Row,*

FICIAL RECEIVER,

(*Courtney Terrell, C J. and Manohar Lall, J.*)

tion to Debt Conciliation Board pending insolvency—Leave of insolvency Court not obtained—Subsequent —Competency—

5 of the Madras

ted by law or

PROV. INSOLVENCY ACT (1920), S. 28.

contravention of any statutory prohibition. An application made to the Debt Conciliation Board is a legal pro-

the father is adjudicated ...

has power to seize and sell the shares of the sons on the

when adjudication stands.

Whe... judicate... tion un...

11 B P. 190 = 19 Pat.L T. 860 =

commence a suit when his debtor has merely applied to be adjudicated insolvent. Subsequent adjudication would not affect the maintainability of a suit without such leave. The intention of Sub-S. (7) is only that the title of the Court or the Receiver appointed by it to the insolvent's property shall relate back to the date when the petition for adjudication was filed. When an adjudication is annulled, it is annulled for all purposes and the position with reference to a suit filed without leave of Court is as though there had never been any necessity for obtaining leave of the Court. (*Panckridge, J.*) CHANDMULL *v.* SATYA CHURN.

42 C.W.N. 34.

——**Ss. 28 (2) and (7) and 51**—*Scope and operation—Execution sale subsequent to admission of insolvency petition but prior to adjudication—Validity—Purchase by decree holder with lea*

The disability of a c... Provincial Insolvency Ac... the property of the insolv... adjudication. A decree holder can therefore ... bring the property of the judgment debtor to sale till the date of the order of adjudication. But by reason of S. 51 of the, Act he can claim the sale proceeds of the execution sale only if they have been realised before the date of the admission of the insolvency petition.

PROV. INSOLVENCY ACT (1920), S. 34.

By the combined operation of Ss. 28 and 51 an execution sale of the property of the debtor is ... order of adjudica-... d admission of an ... itor is not given the ... . *The title of the* ... good faith is protec-... there may be an

A.I.R. 1938 Mad. 906.

...n on 3rd April, ...nt excluded from ... 60. ...or not the salary ... receiver is exclu-... will be whether ... ation was made, *the salary was liable to attachment and sale in execution*

... I C. ... A.I.R. 1938 Cal. 325.

1938 B D. 297 = 10 R A. 631 (1) = *1938 A L R. 345 = 1938 A L J. 134* = A I R. 1938 All. 198.

——**S. 28 (7)**—Relation back—Limits of rule. *See* PROV. INSOL. ACT, SS. 28 (2) (7) AND 37

42 C.W.N. 34.

——**S. 28 (7)**—Scope—Doctrine of relation back—If subject to S. 51 (3). *See* PROVINCIAL INSOLVENCY ACT, SS 28 (2) AND (7) AND 51. 1938 M.W N 841.

——**S. 31**—*Construction—'Arrest or detention'*—Means—If includes order for imprisonment by criminal Courts. *See* CR. P. CODE, S. 488 (3).

1938 A L J. 225.

——**S. 34 (1)**—*Applicability—Maintenance decree in favour of wife against husband—Arrears due under—*

(1) of the Provincial Insolvency Act. A decree for maintenance is clearly distinct from an order for alimony. No execution of the maintenance decree against the insolvent husband can be taken out without leave of the insolvency Court. (*King, J.*) HANIBABEEBI *v.* SYED-

MUNURDEEN SAHEB.
1938 M.W.N. 1235 = (1938) 2 M L J. 1042.

——S 35—*Annulment of adjudication—Debtor adjudicated on his petition—Transfer deeds executed by debtor subsequently found to be fictitious—If ground for annulment of adjudication.*

An insolvent had included in his petition for adjudication fictitious d... passed A large p... claimed to be avai... petitioner s debts ... three deeds of sale ... into consideration the assets considerably exceeded the liabilities and the petitioner was able to pay his debts

Held that the adjudication of the petitioner in insolvency should be annulled. (*James and Agarwala, JJ.*) RAJENDRA PRASAD *v.* NAGESHWAR UPADHYA.
176 I C 541 = 11 R P 67 = 4 B R 733 = 1938 P W.N 453 = A I R. 1938 Pat. 368.

——Ss. 35 and 27 (2)—*Annulment proceedings—Keeping pending—Propriety—Powers.*

It is a matter for consideration whether in all ordinary cases, annulment proceedings shall not be kept pending so long as proceedings under Ss. 53 and 54 are outstanding The better view seems to be that it can be under S 27 (2) (*Stone, C J and Bose, J.*) SULEMAN LATIF *v* LAXMAN. 177 I.O. 760 = A.I.R. 1938 Nag. 312.

——S. 35—*Jurisdiction to annul adjudication—Insolvency petition more than three months after act of insolvency—Adjudication—Power of succeeding Judge to annul on ground of want of jurisdiction.*

... sitting in insolvency is competent to revise his own order or an order of his predecessor adjudicating a person an ...

... 48 L.W 289 = 1938 M W N ... A I R. 1938 Mad 898 = (1938) 2 M L J. 385.

——S 36—*Applicability—Stay of insolvency proceedings before Court at Cawnpore by Chief Court of Oudh—Validity—Insolvency Judge at Cawnpore, if bound to stay—If can reopen after he stayed* ...

The Chief Court of Oudh could no... stay of a case pending before the (... vency Judge at Cawnpore unless it ... High Court. Where such an order ... the Insolvency Judge at Cawnpore b... the High Court, with a remark, th... Judge to decide to stay or not, it does ...

1938 A L J 878 = A.I.R. 1938 All. 555.

——S 37—Effect of annulment—Suit filed without leave of Court. *See* PROV INSOL. ACT, SS. 28 (2) (7) AND 37 42 C.W N. 34.

——S. 37—Validation of proceedings—Extent—Limits *See* PROVINCIAL INSOLVENCY ACT, SS. 53, 54 AND 37. A I R. 1938 Nag. 312.

——S 37—*Vesting order under—If to be simul-* ...

... passed subsequently is perfectly valid and cannot be attached as being without jurisdiction. (*Pandrang Row, J.*) BALUSWAMI NAIDU *v.* OFFICIAL RECEIVER, MADURA 1938 M.W N. 455 = 47 L.W. 587 = A I R. 1938 Mad. 752 = (1938) 1 M L J. 824.

——Ss 37 (2) and 75—*Absence of notice of order of annulment—Questioning in other independent proceedings—If permissible.*

Any complaint as to absence of notice of order of annulment under S. 37 (2) can only be agitated by way of an appeal under S. 75 against the order of annulment and cannot be challenged in other proceedings, (*Norman.*) ALLAH DIN *v.* GHISU LAL.
(1937) A M.L J. 101.

——S. 42—*Transactions not covered by Ss. 53 and 54—Power of Court to review.*

It is quite clear that, in view of the wide powers conferred upon the Court by S. 42 of the Provincial Insolvency Act, the Court has power generally to review any questionable transactions covered by that section ... n if ... oder ... OUL ... CO.
42 C W N. 1153.

——S 42 (1) (a)—*Burden of proof under—Deficiency as assets—Debtor's responsibility—Onus.*

Where the assets of the insolvent do not realise eight annas in the rupee, S. 42 (1) (*a*) of the Provincial ... the burden of satis- ...

... *J.*) AHMED MARAIKAYAR *v.* THANGIAH NADAR.
176 I C 973 = 11 R M 206 = 1938 M W N. 528 = 47 L.W. 653 = A I R. 1938 Mad. 590 = (1938) 1 M.L J. 760.

——S 42 (1) (i)—*Remote transactions—Court, if* ...

... vency Act, ... tion only ... ould have ... *J.*) KAZI ... ND BANK. ... N. 1153.

... *transfer* ...

... olvent prior to the ... of S. 42 (1) (*i*) of ... mpowers the Court ... rder of discharge. ... AR *v.* DINAJPUR 42 C.W.N 1153.

... *fication—Order of Court—If necessary.*

PROV. INSOLVENCY ACT (1920), S. 43.

Per *Thomas C.J.*:—Though the provisions of S. 43 of the Provincial Insolvency Act are annulment of adjudication does not course, but has to be the subject of the Court; in other words it does automatic annulment on the failure of the debtor to apply for a discharge. (*Thomas, C.J. Zia ul Hasan*

was by order made to vest in the Court Amin, there is hardly any justification for the contention that annulment restores the *status quo*. (*Darling, S.M. and Bomford, J.M.*) KRISHNA PRASAD *v.* LAL BAHADUR.

1938 A.L.J. (Supp.) 17=1938 R.D. 402= 1938 A.W.R. (B.R.) 177= 1938 O.A. 424=1938 O.W.N. 641.

——S. 44 (1)—*Discharge—Effect—Insolvency Court if becomes functus officio—Refusal of mutation to auction purchaser of insolvent's property—If revests it in insolvent*

The discharge of an insolvent could not possibly mean the divesting of the official receiver. The insolvency Court does not become *functus officio* as soon as the insolvent is discharged. The proceedings can undoubtedly go on in respect of the property in the hands of the receiver, in spite of an order of discharge. Where certain property of the insolvent was sold—prior to adjudication, in execution of a decree, the fact that mutation was refused to the purchaser on a date after the insolvent was discharged, could not have the effect of divesting the official receiver or the auction purchaser and revesting the property in the insolvent. (*Mulla,*
MAHANGE LAL *v.* FIRM SURAJ PRASAD.

Where a creditor holding a mortgage decree against the insolvent, realises his security before the order of discharge is passed, but does not value his security and prove the balance personally due from the insolvent, the order of discharge releases the insolvent from personal liability under the mortgage as it is a debt provable under the Act and the creditor cannot subsequently claim

S. 49 does not lay down a mandatory method of proving a debt. It merely lays down one of the modes in which a debt may be proved. (*Courtney Terrell, C.J. and Manohar Lall, J.*) BHUDERMULL *v.* HAJI MAHOMED.

173 I.C. 988=4 B.R. 373= 10 R.P. 470=19 Pat L.T. 364= A.I.R. 1938 Pat. 65.

——S. 50—*Applicability—Annulment of adjudication—Subsequent application to expunge or reduce debt of creditor—Competency—Power of Court to act under S. 50.*

PROV. INSOLVENCY ACT (1920), S. 51.

the insolvency has come to an end by annulment of ad- ... n annulled it ... ler S. 50 and ... (*Wort and* ... JOKHIRAM *v.* CHOUTHMAL BHAGIRATH.

16 Pat. 754=1938 P.W.N. 222=175 I.C. 306=

after admission of insolvency petition against debtor—Decree holder aware of pending insolvency and not informing executing Court of same—Purchase by—If protected.

An insolvency petition against a debtor by a creditor was admitted in October, 1932. Notice of the petition was published in the Gazette by 14-1-1933. Another creditor of the debtor, the appellant, brought the properties to sale in execution of a decree obtained by her against the debtor and the sale took place on 23-1-1933. Appellant was represented in the execution proceedings by her agent *C*. The agent was present during the talks held in respect of a proposal for composition, but instead of reporting to the appellant and taking her instructions as he promised to do, he got the properties purchased in the name of his employer, the appellant. The executing Court was not informed by the appellant or her agent, *C.*, of the pending insolvency and was unaware of the insolvency proceedings.

Held, that the appellant was not a *bona fide* purchaser and was not protected by S. 51 (3) of the Provincial Insolvency Act, and the sale was therefore invalid, as

... W. 676=A.I.R. 1938 Mad. 718= (1938) 1 M.L.J. 781.

——S. 51 (3)—*Construction and scope—"In all cases"—Judgment debtor, adjudicated insolvent—Subsequent sale of his property in execution—Validity—Jurisdiction of executing Court.*

There is no doubt about the all-embracing character of the words in S. 51 (3) of the Provincial Insolvency

all cases prior to adjudication; no part of the section can have any bearing upon transactions subsequent to adjudication. Upon adjudication, the property of an insolvent vests immediately in the Official Receiver, and in so far as an insolvent judgment-debtor is concerned, there is no property of his which can be sold in execution by the executing Court. A Court executing a decree has therefore no power to sell a judgment debtor's property after the judgment-debtor has been adjudicated insolvent, and a sale so held in execution is invalid, irregular and inoperative. The fact that the Official Receiver is given ... proceedings would not make ... on the receiver. (*Burn and* ... KARJUNA RAO *v.* OFFICIAL ... I.L.R. 1938 Mad. 1060=

PROV INSOLVENCY ACT (1920), S. 51.

178 I.C. 135=47 L.W 705=(1938) M.W.N. 201=A.I.R. 1938 Mad. 449=(1938) 1 M.L.J. 471.

——S. 51 (3)—*"Property of a debtor"—Meaning—If includes property of debtor already adjudicated insolvent.*

The words "the property of a debtor in S. 51 (3) of the Provincial Insolvency Act, read with the heading of the section, must mean only the property of a person which has been sold previous to adjudication, the "trans action" being the sale All sales both before and after the presentation of a petition but before adjudication by the Court are protected so
title to a purchaser is concerned.
JJ.)
KISTN

——S 52—*Applicability—No insolvent's property.*

Subsequent presentation and admission of insolvency

to sell rema
cation made
of sale is not
S. 52 of the
executing C
30-9-1935.

SIVAYYA *v.* SURYANARAYANA. 48 L.W. 279=1938 M.W.N. 841=A.I.R. 1938 Mad. 906.

or continue proceedings under S. 53 or S. 54 of the Provincial Insolvency Act. Where therefore the cre-

the application and obtain an annulment of the transfer after the annulment of the adjudication. No question of validating the proceeding under S. 37, arises and the property transferred, having ceased to be the property of the debtor, the Court has

PROV INSOLVENCY ACT (1920), S. 53.

no power to deal with it under S. 37. (*Stone, C.J. and Bose, J.*) SULEMAN LATIF *v.* LAXMAN.

177 I C 760=A.I.R. 1938 Nag. 312

——S. 53—*Burden of proof.*

The onus of proof in proceedings under S. 53 of the Provincial Insolvency Act is on the receiver in the first instance. (*Ismail, J.*) MUNNOO LAL *v.* P. K. BANERJI (OFFICIAL RECEIVER)

I.L.R. 1938 All. 800=1938 A L R. 810=178 I.C. 75=1938 A.W.R. (H C.) 566=1938 A L.J. 878=A.I.R. 1938 All. 555.

J.) KULLAPPA REDDIAR *v.* VEERAPPA CHETTIAR.

ience voidable as
iver has to prove
udulently or in bad
transfer gave no
r, and if there was
eceiver has then to

of the minor under S. 53. A transferee cannot be fraudulent by deputy. The rule as to the onus is
dency Towns
terms to S.
ngnekar, J.)
78 I.C. 373=
38 Bom. 449.

——Ss 53 and 54—*"Date of transfer"—Date of execution or date of registration.*

or requi-
poses of
because
But in
sed in the
first instance but ordered on appeal, the date of registration is not the date of the appellate order directing registration, but the date on which it was first presented for registration, in view of S 75 (3) of the Registration Act. (*Madhavan Nair and Stodart, JJ.*) SOMAPPA *v.*

PROV. INSOLVENCY ACT (1920), S. 53.

OFFICIAL RECEIVER OF BELLARY. (1938) M.W.N. 291 = 48 L.W. 522 = A.I.R. 1938 Mad. 801 = (1938) 2 M.L.J. 362.

——S. 53—*Duty of Court.*

In an action to set aside a sale under S. 53, it is not enough to pick out a few circumstances and to find explanations for them and then deduce therefrom that the creditor has discharged his burden of proof. But it is essentially necessary that the Court should consider all the facts in relation to each other and weigh them as a whole and then come to a conclusion. (*Cornish, J*)

is to be found only in the conduct of the parties. It is

175 I.C. 430 = 10 R.N.

——S 53—*Procedure—Joint trial with consent deal separately with each a*

Insolvency Act, the purchaser or an incumbrancer must not only show that the transfer was for valuable consideration but it must also be pro good faith. Good faith is nece the transferee. It is not requi should act in good faith also. *Mukherji, J.*) RAMANANDA GHOSH. I.L.R. (1938) 2 Cal.

——S. 53 and Civil Pr —*Right to apply under S. 5' decree, by transferee of prelim. tion of transferor during its pendency—Official Receiver's objections as to fraudulent nature of transfer not*

PROV. INSOLVENCY ACT (1920), S. 54.

substantially in issue in the suit on foot of the mortgage, the decree in which was transferred. (*Ismail, J.*) MUNNOO LAL *v.* P. K. BANERJI (OFFICIAL RECEIVER). I.L.R. 1938 All. 800 = 1938 A.L.R. 810 = 178 I.C. 75 = 1938 A.W.R. (H C.) 566 = 1938 A.L.J. 878 = A.I.R. 1938 All. 555.

——S. 53—*Scope—Transfer not* bona fide—*Subsequent transfers—If affected.*

Where a transfer by an insolvent is not *bona fide*, the subsequent transfers by the transferees also fall. (*Cornish, J.*) KANDASWAMI GOUNDAN *v.* RANGA-

Provincial Insolvency Act and must be annulled. Where a creditor has filed suits perties of the insolvents, ier creditors whom the it is only reasonable to idea of preferring one tive (*Madhavan Nair*

——S. 54—*Limitation—Period of three months expiring during vacation—Application presented on*

(*Niyogi, J.*) BALKISAN *v.* BHANUPRASAD. 178 I C. 479 = A I.R. 1938 Nag. 454.

——S. 54—*Undue preference—Inference of—When can be drawn.*

Per *Mukherjea, J.*—Obiter: The question whether the transfer in favour of a creditor was made by the give him an undue preference rs, must be decided with reference ntion of the debtor. If a debtor property on the eve of insolvency to consideration being the past debt an inference of undue preference drawn. But if the debtor approaches

ence to the creditor. (*Derbyshire* ... *J.*) RAMANANDA PAL *v.* PAN...
I.L.R. (1938) 2 Cal. ...

——S. 56—*Procedure—Appointment of pleader appearing for party as receiver—Justification of.*

It is objectionable to appoint as Receiver a pleader who represents a party in the proceedings by allowing him to throw up his brief in the middle of the case

...

on appeal before the receiver has completed th... *tions or begun the distribution, it is not* ... ascertain how much he should be paid, ... contingency contemplated by R. 13 of the ... Rules cannot arise at all In such a case all ... Receiver can claim is a *quantum meru*... ordinarily is only 5 per cent. of the assets ... him actually. (*Bose, J.*) LAXMAN PRASAD ... PRASAD. 177 I.C. 650 = 11 R.N. 153 = 1938 N.L.J. 40 = A.I.R. 1938 Nag. 230.

——S. 58 (3)—*Applicability—Decree holder purchaser—If protected—"Good faith"—Notice of insolvency—If negatives good faith.*

The mere fact that a purchaser at an execution sale had notice of the insolvency proceedings against the debtor cannot connote want of good faith. A purchase made on the faith of a Court's order would negative all inferences of bad faith. There is no difference in this respect between a stranger purchaser and a decree-holder purchaser. (*Venkataramana Rao, J.*) VENKATA SIVAYYA *v.* SURYANARAYANA. 48 L.W. 279 = 1938 M.W.N. 841 = A.I.R. 1938 Mad. 906.

——S. 59—*Estate vesting in Official Receiver—Other receivers appointed to help Official Receiver—Official Receiver, if can by himself maintain suits.*

... ate of an ... appoints ... administer ...

178 I.C. 259 = A.I.R. 1938 Lah. 264.

——S. 59—Scope—Suit by adjudicated insolvent pending insolvency—Competency. *See* PROVINCIAL INSOLVENCY ACT, SS. 28 AND 59.
40 Bom.L.R. 956.

... 63, 64 and 74—*Scope—Summary adminis... Duty of Court—Transfer of petition for dis-*...

...

ACT, SS. 63, 64 AND 74. 1937 M.W.N. ...

——S. 66 (2)—*Maintenance of insolvent—Power of Court to reserve portion of his immovable property.*

S. 66 (2) of the Provincial Insolvency Act contemplates only a money allowance being given for the maintenance of the insolvent or his family. It does not empower the Court to reserve a portion of the immovable property of the insolvent for his maintenance. (*...* *Chand, J.*) LADHA MAL *v.* TAJA. 40 P... ...

——Ss. 68 and 4—*Applicability—Sale by receiver under orders of Court—Setting aside—Time.*

S. 68 is intended to apply to provide an appeal ... Court against an act of the receiver and ... the Court against acts of the Court ... receiver. Where a receiver considers ... perty of which the insolvent is the ... sold, and merely invites bids under the ...

PROV. INSOLVENCY ACT (1920), S. 74.

the Court, and refers the bids received to the Court which accepts the highest bid, the sale, if a sale be held to have taken place, is not the act of the receiver and S. 68 does not apply to such a case. An application to set aside such sale does not therefore fall under S. 68. It falls under S. 4 and is not barred by time although filed

——S. 74—Duty of Court under—Insolvency petition—Power of Judge to transfer to Official Receiver for disposal—Enquiry into debts and hold and determine. *See* PRO ACT, SS. 63, 64 AND 74.

——Ss. 75 and 25—*Order dismissing creditor's application for adjudication of debtor—Appeal.*

isolvency Act adjudication 5 of that Act. ...H DIAL. **40 P.L.R. 433.**

——S. 76—*Order of District Judge making com-*

for costs. *See* C. P. CODE, S. 151. **40 Bom. L R. 1025.**

——S. 75 (1)—*Second appeal—Scheme propounded*

in question allows a higher rate of interest on the debts than is permissible under the Act. Such a question is

proved by the creditors is competent. (*Worton and Varma, JJ.*) MAKHAN LAL GOVINDRAM *v.* BHAGWAN SINGH MISTRI. **17 Pat 201=19 Pat.L T. 821= A I.R 1938 Pat. 471**

——S. 75 (3)—*Admission of appeal—If tantamounts to grant of leave.*

PROV. INSOLVENCY ACT (1920), S. 78.

tion can be taken to the competency of the appeal. (*Yorke, J.*) SAGARMAL HANOMAN PRASAD *v.* ABDUL RAHMAN. **173 I C. 631=1938 O.A. 201= 1938 O.L.R 125=1938 O.W.N. 230= 10 R O. 225=A.I.R. 1938 Oudh 101.**

——S 75 (3)—*Appeal—Refusal to modify terms of der—If appealable.*

strict Judge refused to modify the terms of order of his predecessor, the order of refusal is appealable with the leave of the District Court or the High Court. As there had been no decision on that leave to appeal should be 'ow and Abdur Rahman, JJ.) ...DDI *v.* OFFICIAL RECEIVER, BELLARY. **176 I C 48=11 R.M. 28 (1)= 1938 M W.N. 18 (1)=A.I.R. 1938 Mad. 461.**

——S. 75 (3) —"*Person aggrieved*" — *Creditor aggrieved by order of District Court—Appeal to High Court without first applying to Official Receiver to appeal—Competency.*

The words "any such person aggrieved" in S. 75 (3) also include a creditor who is aggrieved by an order of

ency.

An appeal to the High Court under S. 75 (3) of the Provincial Insolvency Act cannot be held to be incompe-

4 B R. 161=18 Pat.L.T. 839=1937 P W N. 865= A.I.R. 1937 Pat 665.

annulment order. (*Norman.*) ALLAH DIN *v.* GHISU LAL. **1937 A M L.J. 101.**

——S. 78 (2)—*Applicability—Period of 12 years under S. 48, C. P. Code—If "period of limitation"—Exclusion of time during which insolvency was pending.*

The applicability of S. 78 (2) of the Provincial Insol-

enough to affect and control the computation of the period of time limited, whether by S. 48, C. P. Code the Limitation Act or any other statute. The period of 12 years fixed by S 48, C.
"limitation" within S. 78 (2
vency Act and therefore in
years limited by S. 48, C.
which the insolvency of the
ing must be excluded. (*K.*
Iyengar, JJ) KALYANASUNDARAM PILLAI *v.* VAITHILINGA VANNIAR. 48 L W. 881 = 1938 M.W.N. 1255.

——S 78 (2)—Joint decree against several persons—Execution against one—Subsequent insolvency of same—Execution against others—Limitation—If saved. *See* LIMITATION ACT, ART 182, EXPL. I.
1938 P W.N. 397.

——S 79—*Calcutta High Court Rules R. 9—Creditors served with notice of hearing of application for discharge—If become parties to proceeding—Death*

of the Court to condone any failure on the part of an applicant to carry out those provis
deposit the decree amount or obta
tion permission to file adequate
the security bond. (*Mulla, J.*
MOHAMMAD YASIN.
1938 A.W.R. (H C) 768.

——S 17 (
S 25—*S.* 17,
High Court,
tion.

S. 17 of the
stands now contains a mandatory provision. An applicant has got to do one of two things, that is either deposit the decree amount in Court or give security as

per directions previously given. When this mandatory provision is not complied with, and a suit is restored the power of the High Court to interfere under S. 25 of the

1938 A.W R. (H C.) 753 = 1938 A.L.J. 1058.

——Ss. 17 and 25—*Security out of time and opposed to directions of Court—Setting aside of ex parte decree—Legality—Interference in revision.*

Where an applicant to set aside an *ex parte* decree, not only failed to furnish the security within the time prescribed but furnished a security different from that ordered to be furnished, a Court if it sets aside the *ex parte* decree under such circumstances, its order is both illegal and *without* jurisdiction and can be set aside in revision. (*Ismail, J*) MARGHA BHAI *v* BIRENDER

t or secu-
or future
decree—
g of secu-

the decree or compliance with the judgment is to an
lgment, and not to one to come
future. A surety for the perfor-
the application to set aside the
charged on the *ex parte* decree
tument, C.J. and Wasoodew, JJ.)
MAGANLAL *v* DAHYABHAI 178 I C. 181 =

parte decree is set aside. (*Bose, J.*) SETH DAWOOD *v.* RAM PRASAD. 172 I C. 547 = 10 R N. 222 = 20 N.L J. 266 = A.I.R. 1938 Nag. 75

——S. 25—*Interference—...—...*
agreement in trial regularly conducted—Hig
powers to interfere on merits.

S. 25 of the Provincial Small Cause Co
ought not to be construed as giving parties
appeal on points of law. The object of S.
enable the High Court to see that there has
miscarriage of justice, that the decision
according to law. Wherever the High Court
the conclusion that the unsuccessful party has not been

not have been admitted, or where the unsuccessful party
has not been given a proper opportunity of bei
or where the burden of proof has been place
wrong shoulders, the High Court can interf

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——S.
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1938 A L J. 742=1938 A.W.R. (H.C.) 434.

——S. 25—*Remedy under—Availability—Decision on a preliminary issue.*

A Court can only act under S. 25 of the Provincial Small Cause Courts Act, where a decree or order has been passed. So when after deciding the issue as to limitation, the case is adjourned to a future date, for

diction—Objection not taken—Interference.

The fact that parties did not take the objection as regards the absence of jurisdiction, might in certain circumstances incline the Court of revision to refuse to

of the rent and ejectment of defendants. The rent deed was executed by only one of the defendants and the others were impleaded on the ground that they were in possession as members of a joint family along with the executant of the rent note. These defendants denied the title of the plaintiff.'

PROV. S. C. C. ACT (1887), Sch. II, Art. 28.

removed by the defendants from certain trees in the
claim or right. Such a suit is
of small causes. (*Beckett, J.*)
RAHIM BAKHSH.

40 P L R 720=A.I R. 1938 Lah. 759.

Scope—Claim for interest
—Jurisdiction of Small

——Sch. II, Art 19—*Suit for refund of tax with a prayer to declare tax illegal—Nature of.*

A suit for refund of license fee on the ground that it is illegal is cognizable by a Court of Small Causes though it is coupled with a prayer to declare the tax illegal. The test of cognizability depends on the construction of the plaint in the case. If the main relief is

(*Niyogi, J.*) RAMDULARE *v.* MUNICIPAL COMMITTEE, AKOLA. 175 I C. 691=11 B.N. 1=A.I.R. 1938 Nag 398.

——Sch. II, Art. 28—*Applicability—Suit by hus-*

178 I.C. 503=1938 M.W.N. 833=48 L.W. 290=A I.R. 1938 Mad. 864=(1938) 2 M.L J. 402.

——Sch. II, Art. 28—*Jurisdiction of Small Cause Court—Position of defendant, if material.*

The question of jurisdiction depends entirely on the allegations made in the plaint and it is immaterial

whether the defendant is a rival claimant to the estate or merely a person in wrongful possession. (*Almond, J. C.*) ZAMIN SHAH *v.* MUKAMIL SHAH.
178 I.C. 31=A.I.R. 1938 Pesh. 79.

——Sch. II, Art. 31—*Scope—"Suit for account"—Suit by agent against principal for specific amount due*

Held, ... fic sum o ... that the ... falling ... excluded ... Court.

Held, further, that for the p ... whether the suit was one for an ... make any difference whether the the agent or the principal. (*Venkatasubba Rao, J.*) ABDUL RAHIMAN ROWTHER *v.* JAMALUDDIN SAHIB & CO. 176 I.C. 806=47 L W. 793=1938 M W N. 707=11 R M. 160=A I R 1938 Mad. 799=(1938) 2 M.L J. 76.

——Sch. II, Art. 31—*"Suit for accounts"—Suit by agent against principal for specific sum of money due on particular dealings—If one for accounts.*

A suit for accounts is a special form of suit. It does not mean that whenever accounts have to be looked into in order to ascertain the amount due by one party to the other that the suit should be technically called a suit for accounts. A suit for a specific sum of money alleged to be due to the plaintiff by the defendant in regard to certain dealings, the plaintiff being merel ...

... A.I.R. 1938 Mad 707=(1938) 2 M.L J. 112.

——Sch. II, Art. 31—*Suit for mesne profits—Jurisdiction of Small Cause Court.*

A suit for recovery of mesne profits, even though for a sum ascertained comes within the purview of Art. 31

Cause Courts Act. (*Addison and Din Mohammad, JJ.*) SIMAR NATH *v.* OFFICIAL RECEIVER.
I L R. 1938 Lah. 341=177 I C. 408=11 R.L 312=40 P.L R 196=A.I.R. 1938 Lah. 219.

——Sch. II, Arts. 35 (ii) and 4—Applicability—Suit for price of fruit removed in assertion of right *See* PROVINCIAL SMALL CAUSE COURTS ACT SCH II ...

... son his proportionate share is not strictly a suit for contribution as contemplated by Art. 41 of Provincial Small Cause Courts Act and hence is cognizable by the Small Cause Court. (*M. B. Niyogi, J.*) JAGAN SETIA *v.* SOMA. 1938 N.L J. 125.

PUBLIC DEMANDS RECOVERY ACT (III OF 1913), S. 20—*Sale of portion of holding—Title of purchaser.*

Where in execution of a certificate issued under the Public Demands Recovery Act, a portion only of a holding is sold, the purchaser acquires only the right, title and interest of the certificate debtor, and not the entire holding. (*Sen, J.*) RAM SANKAR *v.* JOGENDRA NATH. 43 C W.N. 20.

... *Sen, J.*) RAM SAN- ... 43 C W N. 20.

... I OF 1867), S. 4—*Essentials for conviction.*

The only crime under the Public Gambling Act is being found in the place where gambling is going on and it is no offence to gamble in a public place as long as a person is not found doing it. The persons not found in the place where gambling was going on cannot

PUBLIC GAMBLING ACT (1867), S. 5.

S. 526, Cr. P. Code, would not apply. (*Pollock, J.*) KHEMCHAND GIRDHARILAL *v.* EMPEROR. 171 I C. 1007=39 Cr L J. 55=10 B N. 150= A.I.R. 1938 Nag. 63.

——S. 5—*Search warrant—Issue of—Conditions—Inquiry— Necessity— Credible information— Sufficiency.*

The Public Gambling Act does not require the Magistrate to
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LAL *v.* I
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——S. 5—*Sea*
information—If must be stated.

S. 5 of the Public Gambling Act merely requires that the search warrant should be issued after the receipt of credible information. The warrant is, therefore, not invalid if it does not state that it was issued after the receipt of credible information. (*Pollock J.*) KHEMCHAND GIRDHARILAL *v.* EMPEROR. 171 I C. 1007= 39 Cr L J. 55=10 B

——S. 5—*Search*
of house to be searched
by name of owner or occupier

A warrant for the search of a house is not invalid merely because its boundaries are not specified and particularly so where it is described by the name of the owner or occupier and where there is no likelihood of anybody being in doubt as to the identity of the house

——S. 6—*Gaming house—Presumption arises—Nature and extent of.*

There is a presumption under S. 6 of

of gaming in the form of *Satta*
house, it has to be presumed that
house, which includes the presumpt
for the profit of the owner or occupier.
RADHEY LAL *v.* EMPEROR.
I.L.R. 1938 All 422=175 I.C. 233=10 R.A. 657= 1938 A Cr.C 17=1938 A L R 389= 39 Cr.L J. 548=1938 A.W.R. (H C) 147= 1938 A L J. 222=A I R. 1938 All 252

——S 6—*Persons present during game—Presumption—Rebuttal.*

When a gambling game is being played there is a strong presumption that the persons present are taking part in it, but when bets are being made at intervals and legitimate business is being carried on throughout,
sons
their
, *J.*)

39 Cr L J. 55=10 B.N. 150=171 I C. 1007= A.I.R. 1938 Nag. 63.

——S. 8—*Confiscation of money—Legality.*

S 8 of the Gambling Act lays down clearly that all money found in a gaming house may be confiscated and hence in such a case there can be no question whether that money is an instrument of gaming or not. (*Allsop, J.*) RADHEY LAL *v.* EMPEROR.
I.L.R. 1938 All. 422=175 I.C. 233=10 R A. 657= 1938 A Cr.C. 17=1938 A L.R. 389= 39 Cr.L J. 548=1938 A.W.R. (H.C.) 147= 1938 A.L.J. 222=A.I.R. 1938 All. 252.

——S. 13—*Public place—Meaning of—Grove, if a public place.*

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from it, the place was held to be a public place within the meaning of the Act. (*Allsop, J.*) EMPEROR *v.* BALLU SINGH. I.L.R. 1938 All 348=174 I.C. 556= 1938 A.Cr C. 10=1938 A.L R 299=39 Cr.L.J. 441= 10 R.A. 597 (1)=1938 A.W.R. 118 (H C.)= 1938 A.L J. 102=A.I R. 1938 All. 209.

——S. 13—*Scope—Order confiscating money found*

conviction under the
confiscation of the
e accused. Such an
order is clearly in the teeth of the provisions of S. 13 of the Act and is illegal. (*Yorke, J.*) HARIHAR *v.* EMPEROR. 172 I C. 793=1938 A L R. 40= 10 R.A. 434 (1)=39 Cr L.J. 227= 1937 A.W.R. 960 (1)=1937 A L J 973 (1)= A I.R. 1938 All. 11.

——S 13—*Seizure of money, if justified under—Money found on the phar—Disposal—Cr. P. Code, S.* 517.

on the *phar* and it was

A.I R. 1938 All. 209.

PUNJAB ACTS, RULES ETC.

- Punjab Alienation of Land Act.
- Colonisation of Government Lands Act.
- Courts Act.
- Debtors Protection Act.
- Excise Act.
- Land Revenue Act.
- Laws Act.
- Limitation (Custom) Act.
- Municipal Accounts Code.
- Municipal Act.
- Municipal Works Rules.
- Pre emption Act.
- Pure-food Act.
- Redemption of Mortgages Act.
- Regulation of Accounts Act.
- Relief of Indebtedness Act.
- Sikhs Gurudwaras Act.
- Tahsildars Rules.
- Tenancy Act.

PUNJAB ALIENATION OF LAND ACT (XIII OF 1900), S. 2 (3)—*'Land'—Onus of proof.*

The onus of proving that the property in dispute is 'land' as defined in S. 2 (3) and therefor attachment and sale is on the judgment on the decree-holder. (*Tek Chand, J.*) v. KHAIR DIN. 177 I.C. 434=

A.I.R.

defined in the Punjab Alienation of Land Act. (*Tek Chand, J.*) MAGHI MAL v. MOHAMMAD ALI.

in that Tahsil and enjoying the other benefits of the Act in that Tahsil. (*Ram Lal, J.*) LAHAURI RAM v. AMAR CHAND.

——S. 14—*Sale in favour*

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is not a member of an agricultural tribe, the alienation is not void. If sanction of the Deputy Commissioner has not been given in advance, it takes effect under S. 14 of the Punjab Alienation of Land Act as a usufructuary mortgage permitted under S. 6 takes effect in the same form if missioner refuses sanction. Th avoided by the alienee when suc under the law it automatically mortgage for such term, not ex Deputy Commissioner fixes It that S. 65 of the Contract Act alienee is not entitled to sue (*Addison, Ag. C.J. and Di* DIN v. HUKAM CHAND.

PUNJAB COLONIZATION LANDS ACT (V OF 1912)— *tary rights—Right of female tenants—Lower Chenab*

BIBI v. PIR BAKHSH. 17 Lah L T. 19.

——Ss. 3 and 19—*'Collector of District'—If includes Settlement Officer having powers of Collector.*

Where the Commissioner by letter empowered 'the Collector of the Lyallpur District' to sanction sales under S. 19,

PUNJ. COL. OF GOVT. LANDS ACT (1912), S 21

Held, that the words 'the Collector of the Lyallpur

A receiver can be appointed in a fit and proper case

11 R L. 311=40 P.L R. 303= A.I.R. 1938 Lah 458.

of the Commissioner and that any transfer made without such consent in writing was void.

became joint tenant with *A* from the very beginning; and as *B* did not acquire any interest in pursuance of any transfer from *A*, the latter's objection must fail. A.I R. 1930 Lah. 835, Foll. (*Addison and Din Mohammad, JJ.*) DALIP SINGH v. JAGAT SINGH.

A.I.R. 1938 Lah. 721.

——S. 21 (a)—*Occupancy rights conferred on widow in land originally held by her husband as tahud kha-*

recognition of the Government, but it definitely does not

SHAN. A.I.R. 1938

——S. 21 (a) and (b)— *tenants.*

S. 21 (*b*). de- finition, must cover the case of d to

maintainable under S 117 (1), Land Revenue Act (*Tek Chand and Abdul Rashid, JJ.*) JAMALA *v.* MOHAMMADA. 40 P.L.R. 524 = A I.R 1938 Lah. 202.

——S. 141—*Execution of mortgage decree by Revenue Officer—Procedure.*

The procedure to be followed by a Revenue Officer

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of a non proprietor to sell the site of the house which he occupies has to be decided under S. 6 which is subject to S. 7 of the Act (*Beckett, J.*) CHUNI LAL *v* BEANT SINGH. 178 I.C. 551 = 40 P.L R 634 = A I R. 1938 Lah. 642

——S. 5—*Mahomedan Law—if modified by Limitation Act.*

Per *Young, C.J. and Bhide,* ... *contra*).—S 5 of the Punjab L ... that even when both the partie

fied by the Limitation Act, as S. 3 of that Act applies

—*Burden of proof.*

created by S. 5 of the Act in favour of custom; on the contrary, it is only when the custom is established that it is to be the rule of decision. (*Tek Chand and Abdul Rashid, JJ.*) MOHAMMAD NAWAZ *v.* KAURA RAM. 178 I C. 74 = 40 P L R. 565 = A I R 1938 Lah. 166

PUNJAB LIMITATION (CUSTOM) ACT (I OF 1920) S 8—*Suit contesting alienation b* ... *but* ... *rever*

the dismissal of the suit acquired the property for himself by purchasing it from the alienee, the case does not come within the purview of S. 8 of Act I of 1920. No decree having been obtained in the suit, nothing could enure for the benefit of the other reversioners. Nor is the case covered by S. 90 of the Trusts Act. The other reversioners, therefore, have no right to the property purchased. (*Addison and Din Mohammad, JJ.*) MOHAMMAD MALIK *v.* ALI MOHAMMAD. 40 P.L.R. 108 = A.I R. 1938 Lah 305.

OF STATE *v.* B. A. MALAK. 178 I.C. 153 = A.I.R. 1938 Lah 282.

PUNJAB MUNICIPAL ACT (III OF 1911), S. 3 (13) (a)—*'Street'—Private site used by public.*

Where a site which belongs to a private individual has always been in use of the residents of the *mohalla* as an open space or a common courtyard and the

A.I R. 1938 Lah 619.

—S. 41—*Removal of municipal employee—Power* ... *xecutive Officer or President of Committee.*

here is no provision in the Punjab Municipal Act or e Executive Officers Act nor in any rule or bye law e under these enactments which can authorize the utive Officer or the President of the Municipal mittee to arrogate to themselves the powers of reng a municipal employee. (*Addison and Din Maho- JJ.*) SECRETARY OF STATE *v* B. A. MALAK. 178 I.C. 153 = A.I.R. 1938 Lah. 282.

ing.

's not refer to the . (*Addison and Din* STATE *v.* B. A. .R 1938 Lah. 282.

——Ss. 80 and 81—*Terminal tax—Servant introducing goods without paying full tax—Liability of master to pay deficiency.*

Where goods entrusted to a servant ostensibly pass through the terminal tax post as belonging to and carried by the master, the Municipal Committee can call upon the latter to pay the deficiency in the payment of the

PUNJAB MUNICIPAL ACT (1911), S 81.

or not (*Coldstream, J.*) MIAN MOHAMMAD ALLAH BUX v. MUNICIPAL COMMITTEE, LYALLPUR.
I.L.R (1938) Lah 251=177 I.C. 413=
39 Cr L.J. 872=11 R L 316=40 P.L.R 1025=
A.I.R. 1938 Lah 627.

——S 81 (as amended in 1933)—*Scope of—Recovery under—Conditions necessary—Use of word 'rent' if enough.*

sions of section but only a sum that is claimable by the

173 I.C. 211=39 Cr L J 286=10 R L. 418=
A I.R. 1938 Lah. 29.

——S 195—*Action under—When can be taken*

Action under S 195 of the Municipal A
taken only if notice is delivered within six

——S. 195—*Notice by Municipal Committee—Jurisdiction of Civil Court.*

If the notice issued by the Municipal Committee falls within the purview of S. 195 of the Punjab Municipal Act, then the Civil Courts have
only remedy of the aggrieved
under S. 225 If, however, t
within the purview of S. 195 a
then the jurisdiction of the Ci
(*Abdul Rashid, J.*) FAZLU v.
MITTEE, ROHTAK. 40 P.L.R. 980.

PUNJAB MUNICIPAL WORKS RULES (1925),

vendor.

Under S. 15 (*b*) of the Pre empsion Act, the right of pre emption in respect of agricultural land is conferred

PUNJ. REDMPN. OF MORTGAGES ACT (1913) S 12

RABH DAYAL. 40 P L R 508=
A I.R. 1938 Lah 646.

e by testator—Legatee's right to

ed at any moment by the testator
t is therefore doubtful whether a
be a heir within the meaning of
so as to be entitled to pre empt a
(*Addison and Din Mohammad, JJ*) ALLAH DIN v. PRABH DAYAL. 40 P L R 508=
A.I.R. 1938 Lah 646.

——S. 22 (1) and (5)—*Security bond becoming void—Power of Court to ask for cash.*

Having exercised the option between cash and security bond by asking for security bond, the Court cannot ask for cash in case the security bond submitted becomes void. Court should ask for another security bond instead. ZAMAN MEHDI KHAN v. HAYAT KHAN.
I.C. 452=11 R L. 332=40 P.L R 758 (1)=
A.I.R. 1938 Lah. 452.

. 22 (5) (b)—*Extension of time—Power of Court.*

S. 13 (1) (a)—*Adulterated ghee lying at shop of commission agent—Sale—Presumption.*

A commission agent who has purchased adulterated

ACT, S. 4—*Application for redemption within time—Deposit made after limitation—Redemption, if can be allowed.*

The provisions of S 4 of the Redemption of Mort-

I.L.R. (1938) Lah. 498.

——S. 12—*Disposal of petition without touching merits—If without jurisdiction.*

A.I.R. 1938 Lah. 638.

——S. 12—*Order of dismissal—Suit not brought within one year—Effect of.*

PUNJ. REDMPN. OF MORTGAGES ACT (1913), S. 12.

PRABHU MAL *v.* CHANDAN. 40 ...
A.I.R. 19 ...

——S. 12—*Person aggrieved—Who is.*

Any person against whom any order
Ss. 6 to 11 is a person aggrieved within t
S. 12. (*Addison, Ag.C.J. and Din M*
PRABHU MAL *v.* CHANDAN. 40 ...
A.I.R. 1938 Lah. 638.

PUNJAB REGULATION OF ACCOUNTS ACT (I OF 1930)—*Applicability—Loan advanced before Act—Repayment after Act.*

The Punjab Regulation of Accounts Act does not apply when a repayment is made after the commencement of the Act in respect of a loan advanced before that Act came into force, and the creditor is therefore not required to com
Act. (*Bhide, J.*)

——*Trader'—Mo*

A money lender c
definition of the wor
Regulation of Accou
PERSHAD *v.* RAM S
176 I.C. 824=
A.I.R. 1938 Lah. 322.

——S. 2—*'Loan'—Defendant trader at time of loan and of striking of balance.*

Where the defendant was a trader at the time when the loan was originally advanced as well as at the time when the balance was struck by him the transaction is not a 'loan' as defined in S. 2 of the Punjab Regulation of Accounts Act. (*Tek Chand, J.*) BADRI PRASAD *v.* HIRA LAL. 40 P.L.R. 471.

Relief of Indebtedness Act, certain property of the applicant is leased for a period of 12 years, the agreement is tantamount to a lease and, therefore, requires registration under S. 17 (1) (*d*) of the Registration Act. (*Bhide, J.*) JHINDA RAM-FATEH CHAND *v.* MAHNI. 40 P.L.R. 567=A.I.R. 1938 Lah. 685.

——S. 21—*Plea of lack of jurisdiction in Board—Cognizance by Civil Court—If barred.*

Obiter.—S. 21 of the Punjab Relief of Indebtedness Act only debars a Civil Court from taking cognizance of certain classes of suits, and there is no reason why a Civil Court should not be able to take cognizance of a plea of lack of inherent jurisdiction in the Board to pass a certain order. (*Bhide, J.*)
CHAND *v.* MAHNI.

——S. 22—*Scope—Debt Con*
order of fine for contempt of
sion.

S. 22 of the Punjab Relief of
only to orders passed in pursuanc
Debt Conciliation Board passes a...
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PUNJ. REL. OF INDEBTEDNESS ACT (1934), S. 34.

——S. 25—*Maintainability of application to Board—Jurisdiction of Civil Court to determine.*

Any other Court is not competent to determine those matters which have been placed exclusively within the jurisdiction of the Board, nor can it be urged that so long as the Board has not determined those matters, any other Court can continue the proceedings before it in relation to them. The sole jurisdiction to determine

the Proviso to S. 9. For an independent tribunal, therefore, to determine whether a certain application lies to the Board or not would be clearly to encroach upon its jurisdiction and to run counter to the entire scheme propounded in the Act itself. (*Addison, Ag.C.J. and Din Mohammad, J.*) GOPAL DAS *v.* KUSHI RAM. A.I.R. 1938 Lah. 702.

——S. 26—*Decision of Board as to competency of application—If affects question of extension of time.*

the application is incompetent or otherwise, cannot affect the question of the extension of limitation under S. 26. (*Dalip Singh, J.*) WARYAM SINGH *v.* PHERU. A.I.R. 1938 Lah. 780.

——S. 34—*Arrest of judgment-debtor—When justified.*

Under the Act, arrest is not possible unless there has been some contumacious conduct on the part of the judgment debtor and mere inability to pay does not justify arrest. (*Dalip Singh, J.*) PRABHU DYAL BALKISHAN DASS *v.* BHONDU MAL. 40 P.L.R. 618= A.I.R. 1938 Lah. 692.

——S. 34—*Contumacy of judgment-debtor—Burden*

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PUNJ. REL OF INDEBTEDNESS ACT (1934), S. 34.

without just cause contumaciously refused to pay the amount of the decree in whole or in part. The mere fact that a judgment debtor admits that he has certain crops to be harvested and that he will pay the decretal amount out of the money realized from such crop but

UD DIN *v.* KHAMBATTA. 40 P.L.R. 857=

——S. 35—*Applicability—If* *but attached after Act.*

S. 35 of the Punjab Relief of Indebtedness Act applies where a house, although mortgaged with possession prior to the Act, is attached after into force. (*Dobson, F.C.*) IMAM DIN

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——S. 35—*Liability of house to attac*

Under S. 35 of the Punjab Relief Act, the onus of proving the liability of tachment rests on the decree holder. IMAM DIN *v* SHIB DAYAL. 1

——S. 36—*Applicability—Adjustment taking place*

for having the adjustment certified had expired, before the Act came into force. It is, therefore, open to the

S. 36 of the Punjab Relief of Indebtedness Act had repealed O. 21, R. 2, Sub R. (3) so far as the Punjab was concerned. The result is that it is now th the executing Courts in Punjab, whenever a fied payment is pleaded in bar of execution, the question and decide it, even though the debtor has not taken advantage of the permiss him by sub-R. (2), R. 2 of O. 21, C. (*Addison and Din Mahomed, JJ.*) MURLI DHAR *v.* BASHESHAR LAL MOTI LAL.

I.L.R. (1938) Lah. 264=177 I.C. 487= 11 R.L. 330 (2)=40 P.L.R. 14= A.I.R. 1938 Lah. 126.

PUNJ. SIKH GURDWARAS ACT (1925), S. 5.

——S. 36—*Scope of—If retrospective.*

S. 36 of the Punjab Relief of Indebtedness Act, merely alter retrospective *Mahomed, J* MOTI LAL.

word 'control' as distinguished from management, its in- the term 'control' the idea of (*Addison and Din Moham-* GURDWARA PARBHANDAK SINGH.

A.I.R. 1938 Lah. 734.

(*Coldstream and Jai Lal, JJ.*) LOCAL COM- GURDWARAS *v.* SARDUL SINGH.

A.I.R. 1938 Lah. 76.

, 3 (1) and (3)—*Equitable mortgage—Duty of applicant to implead.*

Under S. 3 (1) of the Act, it is not incumbent on the

A.I.R. 1938 Lah. 129.

——S 5—*Petition under—O. 1, R. 8, Civil Pro-*

prejudice. (*Young, C.J., Bhide and Din Mohammad, JJ.*) MASJID SHAHID GANJ *v.* SHIROMANI GURDWARA PARBANDHAK COMMITTEE, AMRITSAR.

175 I.C. 945=11 R.L. 91= 40 P L R. 319=A.I.R. 1938 Lah. 369 (F.B).

PUNJ. SIKH GURDWARAS ACT (1925),

——S. 25-A—*Scope—If excludes jurisd ordinary Courts.*

S. 25 A is an enabling section and not an section. It is intended to give the parties remedy on a cheap stamp within a year of before the Tribunal itself. It however does no the jurisdiction of the ordinary Courts. The party in whose favour a declaration h bunal as to the ownership of sue for its possession in ordir *Singh and Skemp, JJ.)* DODA *v.* GOBIND DASS.

11 R.L 348

——S. 29—*Shiromani G mittee—Unauthorized seizure of jurisdiction by—If subject to control of Court.*

Unauthorized seizure of jurisdiction would be subject to the control of Courts and an act done which is not within the competence of the Shiro Parbhandak Committee to do, would ignored. *(Addison and Din Mohamma* MANI GURDWARA PARBHANDAK GURDIAL SINGH. A.I.R.

——S. 142—*Member of Gurdwa charge of negligence—Aw*

(Jai Lal and Dalip Sin SHIROMANI GURDWARA AMRITSAR.

PUNJAB SUBORDIN *ment—Order of officer—*

Disciplinary cases in which punishment of any nature is inflicted require an order by the officer himself. Where there is nothing leading to the formulation of an order, case, but the final and formal order nature of the officer and it is not sufficie dication of what the order is to be and to draft and issue. *(Garbett, F. C* LAL *v* EMPEROR.

——*Punishment—Stoppage of incre*

errors in the past now corrected. *(Garbett, F. C.)* HARDAWARI LAL *v.* EMPEROR. 17 Lah L T. 33.

PUNJAB TAHSILDARS ...

Recovery statement—Tahsildar signing to be inexact—Liability to departmental

A Tahsildar who joined a raiding pa house of a suspected counterfeit coiner the police and signed a recovery statement knowing

17 Lah L.T. 5.

7), S. 5 *Right of*

of land illed the icy Act, of land for 30 years without paying any rent therefor. Under the Act, a daughter or a sister can never acquire any occupancy rights. It is only a widow who can acquire occupancy rights under S. 59 (1) (*b*) of the Act. *(Abdul*

to the mortgagee on the expiry of limitation is binding on the landlord. *(Bhide, J.)* DEVI DAWALA *v.* COURT OF WARDS. 40 P.L.R. 240 = A I.R. 1938 Lah. 488.

acquired title gnizable by a *(Bhide, J.)*

177 I.C. 703 = 1938 Lah. 82.

y—Period for ng occupancy rights—Mortgagor losing his rights under S. 59—Mortgagees, rights, if retained.

d of limitation for the n occupancy right under

mmad, J.) COURT OF 40 P.L.R. 948 = A.I.R. 1938 Lah. 675.

ired—Succession—

is not exhaustive the heirs of all the It is obvious that until all the descendants of the joint tenants have be-

PUNJAB TENANCY ACT (1887), S. 59.

come extinct, the tenancy does not revert to the landlords. (*Abdul Rashid, J*) MT INDO *v.* JAGTA.
177 I O 870=40 P L R. 232=A.I R. 1938 Lah. 611.

——S. 59 proviso—*"Occupied"—Interpretation.*

The word 'occupied' in the proviso to S 59 of the Tenancy Act implies some control over the land by whatever name it may be expressed in law. It may not necessarily be actual possession It may be in some cases constructive possession. But where a person has neither physical control over the property nor is in a position to exercise any dominion over the property through his tenants or servants nor in a position to assume physical control over it, he cannot be said to be

(*Addison and Din Mahomed, JJ*) ATTE *v.* FAIZ MOHAMMAD I.L.R. (1938) Lah 411=177 I O 445= 11 R L 325=40 P L R. 269= A I.R 1938 Lah. 435.

——S. 77—*Suit by collateral of last occupancy tenant for possession against landlord—Plea by landlord that tenancy had been abandoned by deceased tenant—Jurisdiction of Civil Court*

Suits by collaterals of the last occupancy tenant claim-

Civil Court. (*Tek Chand, J.*) MULA *v* ROSHAN. 40 P.L R 111.

——S. 77 (3) (d)—*Occupancy rights of judgment-debtor sought to be attached and sold—Jurisdiction of civil court to decide whether rights fall under S. 5 or Ss. 6 and 7.*

A Civil Court has jurisdiction to decide as to whether the occupancy rights held by a judgment debtor, which are sought to be attached and sold in execution of a decree, fall under S. 5 or Ss. 6 and 7 Such a suit is

to determine in the last resort the ... of a Court of special jurisdiction ... fact that the "dispute or matter" is ... arise incidentally in a suit of the cl... in such a clause as (*i*) is not sufficient to exclude it from the jurisdiction of the Civil Court ... found that haq buha is leviable in ... and is therefore a village cess and a ... for declaration that he is not liabl... alleging that he does not come w... people liable to pay the same, the ... Civil Court is barred as the matter in dispute is the very

RAILWAYS ACT (1890), S. 47.

thing with respect to which a suit of the class described in Cl. (*i*) would be concerned as its subject matter. Cl (*i*) cannot be interpreted as applying only to cases where the sole dispute is as to the amount payable. What Cl. (*i*) characterizes is a class of claim: whether a suit comes within it or not does not depend on the defence taken to the claim. The view that the Civil Court has jurisdiction where the plaintiffs claim a declaration that though certain cesses are payable, the plaintiffs are not liable to pay by reason of not belonging to classes from which payment can be claimed, is not a sound construction or application of the terms of S. 77 (3). The claim is exactly the counterpart of the suit

Lah 173 Overr.; 16 Lah. 204=A. I. R. 1935 Lah. 150, Reversed. (*Sir George Rankin.*) MAHOMED NAWAZ KHAN *v.* BHAGATA NAND.
I.L R. (1938) Lah. 514=175 I O. 769= 1938 O.A 641=1938 M.W.N. 762= 1938 O L R 332=1938 O.W N. 715= 1938 R.D 662=68 O.L J. 36=11 R P.O. 35= 4 B.R. 745=1938 A L R 645=40 P L R 1040= 1938 A.W R. (P C.) 158=A I R. 1938 P C 219=

... ques... rect to ... estions ... Court to discuss the question of *res judicata*, although it was raised before it, does amount to a material irregularity and justifies a reference by the commissioner. (*Dobson, F. C.*) SULTAN MAHOMED *v.* KARAM ILAHI.
17 Lah L.T. 31.

RAILWAYS ACT (IX OF 1890), S. 13—*Duty of Railway Company—Standing grass adjoining track—Fire line—Maintenance—Negligence in respect of—Liability.*

The Railway Company are bound not only to use due

... allows dry ... company is ... B. & C I.
1938 A M L J. 25.

... 18—*Goods when un... ays—Strict construc-*

In the restricted sense that delivery had not been taken.

RAILWAY *v.* KASHI RAM 1938 A.M.L.J. 6.

——**Ss. 55 and 56**—*Notice of proposed sale by public auction—Sufficiency—Essentials.*

A notice of an intention to sell at a public auction

A.I R. 1938 P.C. 12=(1938) 1 M.L J. 83 (P.C.).

—*Meaning.*

5 and 56 must

iven to them in

a public sale at

Held, there was no public auction in the ordinary meaning of the words: there was no sale in public, there was no opportunity for competitive bidding: in fact, what was done bore no resemblance to a "public auction." The Railway Company did not sell the coal in the manner prescribed by the sections, and therefore could not

—*Railway Company, if exempted in case of fire under*

from small to bigger waggon—Consignor not informed—Liability for damages.

The exemption from liability afforded to the Railway

k-note forms A and B is

the Railway administration

e ordinary route and once

that route the protection

ends. Where a Railway

route diverted a

which in its turn

rom a small to a

ere not intimated

in the shape of

liability by seek-

he diversion and

h of a necessarily

implied term in the contract. (....., *J.*) KISHAN LAL MATRUMAL *v.* B. B. AND C. I. RAILWAY CO. **I L R. (1938) All. 888=178 I.C. 70=1938 A L R. 816=1938 A W.R (H.C.)557=1938 A L J. 855=A.I R. 1938 All 561.**

RANGOON CITY MUNICIPAL ACT (VI OF

ility to Mayor—Notice of

or—Mayor disallowing reso-

S. 45, Specific Relief Act

City Municipal Act can be

the member filed a suit under S 45, Specific Act, making it incumbent upon the Mayor to he moving of the censure resolution.

Held, that as the member had another adequate remedy under S 13 (2) Rangoon City Municipal Act, the remedy under S. 45, Specific Relief Act, was not available (*Mosely and Shaw, JJ.*) ALAN MURRAY *v* L. H. WELLINGTON **1938 Rang L R. 83=176 I C. 158=11 B R. 33=A I R. 1938 Rang. 18.**

assessments in force of similar premises used for

ghbourhood, that is, the "com-

tle value when there is direct

value of the hereditament in

679, Rel. on. (*Roberts, C.J.*

PORATION,

LTD.

I.C. 406=

Rang 173.

Sch. I, Chap XIV—

ry.

in Chap. XIV of Sch.

Act made under the

(*vi*) (1) of the Act,

municipal employee is

entirely in the discretion of the municipality (*Roberts, C. J and Sharpe, J*) SOLOMON *v.* THE OFFICIAL ASSIGNEE 1938 Rang L R 542

——Sch I, R 6—*"Substantive proposition"—Vote of non confidence.*

Obiter —The words "substantive proposition" connote

WELLINGTON 1938 Rang L.R 83=176 I C. 158= 11 R R. 33=A I R. 1938 Rang 18.

RANGOON INSOLVENCY ACT (1909), S. 9 (g)—*Suspension of payment—Notice of—What amounts to—Test.*

of composition made by the debtor is not accepted, suspension of payment is the only alternative Where therefore a debtor said that if his offer of composition was not accepted he had no other assets whatever and there was nothing else that he could give to his creditors, even if there was no definite statement by the debtor that he would have to file his insolvency petition, it is clear that his statement was a statement which could lead the creditors to infer only that he intended to suspend payment of his debts and therefore his statement amounted to an act of insolvency. (*Mya Bu, Offg C. J. and Dunkley, J.*) CHUAN SENG & CO. *v.* ASTER & CO. A I R. 1938 Rang. 476.

——S 17—*Conditional disallowance of arrest on*

A I R. 1938 Rang 477.

——S. 22—*Discretion of Court—Exercise of.*

The jurisdiction of the Court to annul or stay proceed ings on an adjudication order un
Rangoon Insolvency Act is a discre
and cannot be invoked as of right
factor which decides the court whet
discretion or not is whether the assets can be more conveniently and efficiently administered in the one court than in the other. (*Braund, J*) *In the matter of* MOTILAL PREMSUKHDAS 1938 Rang L R. 166=

—*Effect.*

The only appropriate way to put an end to the assignor's reputed ownership of book debts is for the assignee

notice have terminated his consent to the insolvent's reputed ownership, it is not open to him if he waits until the very last moment to say that he has had no time to do it. In 1931 a person mortgaged his book debts. On 5th January, 1937, the assignee took possession of the transferor's property under the charge and posted ex-
ie entrances. No
espatched to the
transferor applied
did not constitute
ult in ending the
reputed ownership of the insolvent. Hence the debts outstanding on 6th January, 1937, were property of the insolvent divisible among his creditors. (*Braund, J.*) AVIET STEPHENS, *In the matter of.* 175 I C. 786=11 R.R 18= A.I.R. 1938 Rang. 1.

debts—Assignment—If still in
insolvent—Considerations to
—Reputed ownership—Facts necessary to put an end to.

An agreement can create a valid charge on or assignment of, the future book debts. Nothing passes under it until the property comes into present existence. Where the assignor becomes an insolvent, the debt remains in the order or disposition of the insolvent within the meaning of S. 52 (2) (*c*) of the Rangoon Insolvency Act, till notice has been given to the debtor. In order to decide whether the book debts are the goods which comprise the property of an insolvent or whether it belongs to the assignee of the book debts, it has to be decided firstly whether at the commencement of the insolvency the goods were in the possession, order or disposition of the insolvent in his trade or business;
he consent and per-
nd thirdly whether
nces that the insol-
. In 1931 a person
January, 1937, that
charge of the trans-
notices to that effect

the assignee did not prior to presentation of the insolvency petition, take the steps which were open to him within the time available to terminate the consent by
possession,
what was
consent, in-
btors, may
nership of
the insolvent and that at the commencement of the insolvency, the situation of the goods was no longer such as to convey the reputation of ownership to the
enquiry on the
BALTHAZAR
IGNEE.
938 Rang. 426.

——S. 99—*Firm—Adjudication—Effect.*

A firm is not a legal entity, and a firm cannot be adjudicated insolvent, but the partners of a firm can be

RANG. S. C. C. ACT (1920), S. 25.

... CHUAN SENG & CO. v. ASTER & CO.

... the Court ...

(*Sharpe, J.*) R. N. PANDAY v. MOHAMMAD KASIM KHAN. **1938 Rang. L.R. 565**

RECEIVER.

See also (1) C. P. CODE.

(2) PROVINCIAL INSOLVENCY ACT.

——Appointment—Effect of—Property in possession of receiver—Suit for possession of—Sanction of Court—Necessity. *See* C. P. CODE, O. 40, R. 1.

——...

Proprie ...

ACT, S ...

——(...

Whe ...

Court u ...

be considered as appointed on bena ... interested in the property, and he is entitled to his ordinary commission and allowance, and also to a lien on the estate as against all persons interested in it for the balance, whatever it may be, that shall be found to be due to him on taking his account. A receiver, though discharged by the dismissal of the suit in which he was appointed, is entitled to a lien on the estate for all his just claims and allowances (*Roberts, C.J. and Dunkley, J.*) DAW OO. v. U BA THAUNG.

178 I C. 30 = A I R. 1938 Rang. 357.

——*Discharge—Official Receiver appointed to take charge of mining estate—Receiver negligent and incompetent—Appointment of Chartered Accountant in his place—Propriety.*

The Official Receiver was appointed to take charge of leasehold property consisting of a mining estate. On a petition that the estate had not been efficiently administered and that the Receiver was not collecting the amounts properly due to the estate, the true position was not disclos ... Official Receiver ... The Official Re ... with the statem ... of the most imp ... however made n ... with. He ign ... Receiver was n ... the position whi ... situation.

Where before a receiver was discharged, objections were taken by the parties to the propriety of the entries in the accounts filed by the receiver and they were referred to a Commissioner and were dealt with by him and objections were also considered by the Court, it cannot de said that the propriety of the accounts was not considered by the Judge at the time when the receiver's

REGISTRATION ACT (1908), S. 2.

accounts were passed and he was discharged. However, ... d to the receiver other ...

... AVARTI.

A.I.R. 1938 Cal. 597.

... ative of parties to liti-gation—... belonging to estate—Execution by receiver—Procedure. *See* C P. CODE, O. 40, R 1.

40 Bom L.R. 932.

——*Power to appoint—Property of agriculturist.*

Agriculturists in N. W. F. Province have the right to alienate their lands within specified limits and to enjoy the benefits of those lands. In execution of a decree held against an agriculturist, the appointment of a receiver for a limited period is not against public policy on the ...

176 I.C. 14 = 11 R. Pesh. 4 = A I R. 1938 Pesh. 30.

RECORD-OF-RIGHTS—*Entries in—Presumption of correctness—Difference between successive records—Which to prevail.*

There is a statutory presumption of correctness attaching to a record-of rights; where the entries in successive records differ from one another, the presumption attaches to the latest entry. (*Rowland, J.*) SURYAMAL SARAF v. SRIRAM NAIDU.

19 Pat L T. 622 = 1938 P W.N. 532

——*Entries in—Value of.*

The importance and weight of entries in the record of rights varies with the circumstances of each case. (*Davis, J.C. and Mehta, J.*) TAHILRAM TACKCHAND v. MT. MIRAL. **176 I C 549 = 11 R S. 22 = A.I.R 1938 Sind 132.**

——*Presumption of correctness — Challenging — Onus.*

It is well settled that it is for the party challenging ...

... TION. **1938 P.W.N. 810.**

... , Ss. 2 (6) ... leaves—

... the trees ... th a grant ... se. Such ... the defini- ... arise out of land" and so require registration under S 17 (1) (*b*). (*Stone, C.J. and Puranik, J.*) MULJI SICKKA & CO. v. NURMOHAMMAD. **A I R 1938 Nag 377.**

——S. 2 (9)—*'Crop'—Leaves if included.*

The word 'crop' in S. 2 (9) might include leaves of a tree. (*Stone, C.J. and Puranik, J.*) MULJI SICKKA & CO. v. NURMOHAMMAD. **A I R. 1938 Nag. 377.**

REGISTRATION ACT (1908), S. 17.

——Ss. 17 and 49—"Affecting immovable property"—Deposit of title deeds as security for debt—Collateral security letter in respect of—Admissibility without registration. *See* T. P. ACT, SS. 58 (*f*) AND 59.
1938 M.W N. 235.

——S. 17—*Agreement to divide property if successful*

A.I.R. 1938 Lah. 721.

——S. 17—*Document of title—Report to revenue officer relating to mutation—Registration, if necessary.*

A report made to a subordinate land revenue officer under the statutory provision relating to changes in the land revenue records does not operate to create a title for the purposes of S. 17 of the Registration Act. (*Beckett, J.*) HAR CHAND *v.* HIRA LAL.
40 P.L.R. 682 = A I R. 1938 Lah. 760

——S. 17—*Document varying rent in respect of existing tenancy requires registration.*

A document which merely varies the rent in respect of an existing tenancy requires registration if the earlier lease is registered, or the deed itself might be compulsorily registrable because it purports to limit a right in respect of an immovable property worth one hundred rupees or upwards. (*Mukherjea, J.*) KAILASH CHANDRA *v.* MADAN MOHAN. 42 C W N. 107.

——S. 17 (1)—*Applicability—Document declaring that executant had no title to property standing in his name—'Declare', meaning of.*

Where a document declared that the executant had no title to the plots transferred to him and standing in his name and that the title rested with somebody else for whom the executant was only a benamidar, it is not a document which creates a title but it only acknowledges that the executant never did have any title. The word 'declare' in S. 17 of the Registration
in the same sense as 'create' 'assign'
It implies a definite change in the
property. (*Yorke, J.*) JAFAR ALI
RUNNISSA. 174 I C 378 = 1938 R.D 499 = 1938 O L R 182 = 1938 A W R. (C C) 49 = 10 R C. 251 = 1938 O W.N. 454 = 1938 O.A. 346 = A.I.R 1938 Oudh 119.

——S. 17 (1)—*Decree adjusting claim in execution—Creation of charge on immovable property not subject-matter of suit and worth more than Rs. 100—Registration—Original decree itself—If to be sent for registration—Copy of decree—If may be sent.*

A decree or order adjusting the claim of the judgment-creditor in execution of his decree, whereby a charge is created in his favour on immovable property, of the value of more than Rs. 100, not the subject matter in suit, which is compulsorily registrable under S. 17 (1) of

trar for being registered. The decree or order should always remain on the records of the Court. (*Rangnekar and Norman, JJ.*) VINAYAK *v.* PARSAPPA.
174 I.C. 954 = 10 R B. 511 = 40 Bom.L R. 160 = A.I.R. 1938 Bom. 212

REGISTRATION ACT (1908), S 17

——S. 17 (1) and (2) (xi)—*Applicability—Receipt for mortgage-money—Admissibility without registration to prove payment.*

Receipts purporting to put an end to the mortgage rights do not come within the exception embodied in S. 17 (2) (*xi*). It follows therefore that these receipts are

When a mortgage is executed and registered, the mortgagee gets an interest in immoveable property, and one part of that interest, is the right to receive interest at a particular rate. Any document which reduced the mortgagee's right to receive interest at the given rate, affects his 'interest in immoveable property' and it is compulsorily registrable under S. 17 of the Registration Act. (*Baguley and Mosely, JJ.*) U PO THIN *v.* THE OFFICIAL ASSIGNEE. 1938 Rang L R. 293 = 177 I C 437 = 11 R R 126 =

——S 17(1)
tion without
Necessity. *See*
21. 1937 A.W R 1218 = 1937 A L J. 1303.

——S 17 (1) (b)—*Applicability—"Declare"—Arbitration without intervention of Court—Dispute as to title to immovable property—Award declaring rights of parties—Registration—Necessity.*

An award made in an arbitration without the intervention of the Court, which decides the question of ownership of immovable property is a document which falls under S. 17 (1) (b) of the Registration Act, as it

inasmuch as it declares the rights of the respective parties to the arbitration in the property. (*Leach, C. J.*) VARISAIMUTHU CHETTIAR *v.* SAMI MUTHU CHETTIAR. 176 I C 646 = 11 R M 145 = 1937 M W.N. 1183 = A I.R. 1938 Mad. 55.

——S. 17 (1) (b)—*Applicability — Dispute between tenants as to possession of land—Proceedings under Ss.* 145 *and* 146, *Cr. P. Code—Compromise limiting and defining interests—Registration.*

A dispute regarding possession of certain area of land having arisen among some tenants, action was taken under Ss. 145 and 146, Cr. P. Code, and the land was attached. After the order of attachment a compromise was arrived at among the parties limiting and defining
tenants concerned
land as tenants-
nterest created was
arty was to have
other parties as
distinguished from the previous state of things when the disputed land was held by all the parties either as tenants in-common or joint tenants.

Held, that the compromise deed must be dealt with as a document amounting not merely to a mere recital

——S. 17 (1) (b)—*Award recognising absence of mortgagee's interest in portion of mortgaged property—Need for registration.*

An award which only recognises the fact that the mortgagee never had any interest in a portion of the mortgaged property for the simple reason that the mortgagor had also no interest in that property, does not create, or extinguish or limit any right, and therefore does not need registration. (*Dalip Singh, J*) MST. PARBATI *v.* GOPAL DAS. 40 P L.R. 291 = A I.R 1938 Lah. 481.

——S. 17 (1) (b)—*Equitable mortgage—Need for registration—Test.*

In deciding the question as to whether evidencing an equitable mortgage requires under S. 17 or not, the question to be whether the document constituted the barg the parties or it was merely a record of an

purpose of considering whether the document is to be taken as embodying a bargain between the mortgagor and mortgagee or as merely evidencing a transaction which has already been completed before the document was executed or delivered, not only the terms of the document must be looked into but also the attending circumstances (*R. C. Mitter and Sen, JJ.*) RAM RATTANDAS *v.* MST. SEW KUMARI.

——S. 17 (1) (b)—*A*
—*Registration, when ne*

Ordinarily a mortgage be an oral transaction not unusual for the depo memorandum in writing. If there is such a writing the question is whether it creates the mortgage or whether the mortgage is complete without the writing, the writ-

BAI *v.* OFFICIAL TRUSTEE OF BENGAL.

GOPAL DAS. 40 P.L R 291 =

Partition memoranda which do not co record of a past division, and which contai of an agreement to sever and to divide, subsequent formal document being execute regarded as recitals of a partition so as to be exempt

of the Registration Act. ble, and non-registration the fact of partition. *J.*) RUDRAGOUDA *v.* ..C. 361 = 10 R.B 538 = 40 Bom L.R. 202 = A.I R. 1938 Bom. 257.

——S. 17 (1) (b)—*Registration—Necessity—Test—Rights created and not the object of the transaction to be considered—Sale of timber with right to enter to cut and take it—Trees to be cut not specified—Fixing of time limit and payment by instalments—Presence of a forfeiture clause—Deed, if requires registration.*

In determining whether a document has got to be registered, one is concerned not with the object which the transaction relates to, but with the rights created or declared by the instrument. Where an instrument provided that one of the parties was to cut and take timber from the forest of another and was allowed to

ve ascertained timber sold and created rights and interests in and hence required registration Act. (*Stone, C.J. and Bose, J.*) NARAYANSINGH. 1938 N.L J. 306 = A I.R. 1938 Nag. 497.

——S 17 (1) (b)—Right to collect and remove leaves—Grant—Registration—Necessity. *See* REGISTRATION ACT, Ss. 2 (6) AND 17 (1) (*b*). A I.R. 1938 Nag. 377.

——Ss 17 (1) (b) and 49—*Scope—Award relating to immovable property of value over Rs. 100—Non registration—Effect—Award made decree of Court by in-*

upwards to or in immovable property, it is compulsorily registrable, where the award is compulsorily registrable but not registered, the Court is not compe ree upon it, as that is con- 49 of the Registration Act. on the award without ad- may be set aside on review e or error apparent on the ourt has been misled into the statute. (*Broomfield* IANLAL *v.* DAHYABHAI. 177 I C 911 = 40 Bom L R. 952 =

1938 N.L.J. 123. *ing receipt of con- , if necessary.* of the considera-

A.I.R. 1938 Lah. 497.

REGISTRATION ACT (1908), S. 17.

——S. 17 (1) (e)—*Assignment of mortgage decree—*

gagee and a subsequent mortgagee bringing a suit on his mortgage and whose mortgage is admittedly subject to the mortgagee rights of the prior mortgagee, cannot claim a decree free of the mortgage rights of the prior mortgagee His rights cannot be held to have disappeared merely because the assignments by him have been found to be invalid for want of registration. (*Dalip Singh and Bhide, JJ.*) PEOPLES BANK OF NORTHERN INDIA, LTD *v.* MALIK RAM KISHAN
178 I.C. 278 = A.I.R. 1938 Lah. 430

——S 17 (2) (vi)-
course of proceedings n
created by compromise

a charge on immovable property which was the subject-matter of the proceedings, and the Court order on the compromise, merely stating the order must be taken to convey a good d than a mere order of dismissal; such is meant to incorporate the statements the parties in the compromise and to con view of those statements it was unnecessary to proceed with the case any further, the charge created by the compromise "lodged" by the Court falls under S 17 (2) (*vi*) of the Registration Act. (*Venkatasubba Rao and Abdur Rahman, JJ.*)
SUBBARAYA PILLAI.
1938 M.W.N

——S 17 (2) (vi
Attachment of immov
Raising of attachme
not to alienate attached
ing charge on some
sity

Where in a money suit the immovable property of

the Registration Act. The undertaking dant not to alienate operates in law as against him with regard to the property the suit. (*Divatia, J.*) KRISHNA *v.* MADHAV.
I L R (1938) Bom 738 = 178 I C. 500 = 40 Bom L R 929 = A.I.R 1938 Bom 461.

——S. 17 (2) (vi)—*Compromise decree granting*

REGISTRATION ACT (1908), S. 17.

decree granting occupancy rights is inadmissible if un- (*Wort, J.*) SHEIKH GUHI SAUDAGAR *v.* BANERJEE. 174 I C. 200 = 4 B R. 407 = 10 R P. 492 = A.I.R. 1938 Pat 140.

(2) (vi)—*Consent decree—Transfer of egistration, if necessary*

Terms of settlement embodied in a decree of Court come within S. 17 (2) (*vi*) of the Registration Act and do not require registration, although they affect a transfer of property (*Costello and Lort Williams, JJ.*) MANIK CHAND AGARWALA *v.* PARESH NATHJEE.
I L R (1938) 2 Cal 312.

——S. 17 (2), Cl. (6)—*Decree on basis of compromise but not embodying its terms—Compromise, if requires registration.*

Where a compromise entered into by the parties to a

A.I R. 1938 Lah. [illegible]

——S 17 (2) (vi)—*Scope—Compromise deed creating charge—Decree passed before* 1929—*Registration.*

A decree passed prior to 1929, embodying the terms

Necessity for registration.

Sub S. (2) of S. 17 of the Registration Act reserves s.(*b*, and d by this died in a property necessity of ANDRA *v.* N. 107. *use decree ence.* under the old Registration Act, valid and be received *Venkatasubba Rao and Newsam, JJ.*) AMBU NAIR *v.* UTHA AMMA.
176 I.C. 753 = 10 R M. 153 = 1937 M.W.N. 1254 = A.I.R. 1938 Mad. 202.

——S. 17 (2) (xi)—*Purchaser out of money left with ming mortgage—Receipt reciting e—Admissibility.*

is mortgaged by the owner who and the purchaser redeems the

REGISTRATION ACT (1908), S. 25.

mortgage out of the money left with him, the receipt reciting the fact of extinction of the mortgage is admissible in evidence on the ground that the transaction is not between original parties to the mortgage. The purchaser can enforce the contract by means of a suit and also can raise the question by way of defence in a suit brought by the mortgagee 7 All. 820 and 27 All. 305, Foll. (*Jai Lal, J.*) UDHAM SINGH *v.* BISHAMBAR DAS. 178 I C. 168 = 40 P.L.R. 776 = A.I.R. 1938 Lah. 485.

——S. 25—*Document already four months old registered by Sub-Registrar—Registration, if valid.*

A Sub-Registrar has no power to extend the time beyond the standard four months for the registration of document and he has no jurisdiction to proceed with the registration of a document which is already four months old. Where therefore a document old is registered by a Sub Registra bad. (*Baguley and Sharpe, JJ.* MA E TIN. 174 I C. 4 A I

——S. 28—*Fraud on registration law—Burden of proof.*

The question whether the parties to a document intended to commit a fraud on the la question of fact, and like every ot must be pleaded and proved. The fraud must prove that the parties item of property fraudulently in to give jurisdiction to the particular registering officer before whom it was presented, and that there was no intention in fact that the document should have any binding effect on that item of property. (*Bajpai and Hamilton, JJ.*) SULTAN AHMAD KHAN *v.* SIRAJUL HAQUE. I.L.R. (1938) All 125 = 174 I C. 738 = 1938 A 1938 A L.J.

——S. 28—*Fraud on* ... *amounts to—Jurisdiction of Sub-Registrar—Determin-*

to the joint ownership of the family, and the property is

cause of non-registration, for any reason whatever, that matter is foreign and should not affect the original enquiry. The fact that because of the Sub-Registrar's refusal, the deed does not perhaps operate on the particular item of property has no effect on the original question of his jurisdiction. It is only the act of the parties that has to be considered, and if the parties themselves intended to perpetrate a fraud on the law of registration, the matter then assumes a different com-

REGISTRATION ACT (1908), S. 34.

plexion; but if on account of any action of the Sub Registrar certain consequences flow, the act of presentation itself would not become invalid (*Bajpai and Hamilton, JJ.*) SULTAN AHMAD KHAN *v.* SIRAJUL HAQUE. I L.R. (1938) All 125 = 1938 A.W R. (H.C.) 98 = 174 I C. 738 = 1938 A.L R. 324 = 10 R A. 615 = 1938 A L J 23 = A.I R. 1938 All. 170.

——S. 28—*Place of registration*—Bona fide *mistake as to—Effect—Remedy—Procedure to be followed.*

Where owing to a *bona fide* mistake every one including the Sub Registrar a document is registered at a place where it could not be registered, as the properties concerned were not within the jurisdiction of the Sub-Registrar concerned, the document is inoperative. But in such a cas- the document can be presented for re- proceed as t time. No no limita- , *C. J. and* OBI. 1938 N L J. 403 = A I.R. 1938 Nag. 550.

——S. 32—*Minor claiming under document—Right to present it for registration.*

presented . A minor egistration. R DAS *v.* 177 I C. 517 = 10 R C. 253 = A.I R. 1938 Cal. 120.

——Ss. 32 and 33—*Power of Attorney—Construction—Power given to carry on proceedings in Court etc.—If confers power to present document before Sub-*

to the exact words contained therein. The word "etc."

——S 33—*Power of attorney—Validity—Conditions*

Under S. 34, Registration Act, an enquiry as to whether any of the parties concerned in the registration is a major or not is not one of the duties imposed on the Registrar. The opinion of the Sub Registrar as to the executant's age when the document was presented for registration cannot be accepted as evidence of his age at all, much less conclusive evidence. (*Grille, J.*) KISAN ISARAMJEE *v.* MT. JAIWANTI. A.I.R. 1938 Nag. 385.

——S 34 (1), proviso—*Extension of time—Order signed by District Sub-Registrar—Validity*

Where from the form of the order it appeared to be clear that the order under S. 34 (1), proviso, extending time, was issued by the District Registrar but signed for him by the District Sub Registrar.

Held, that it might be more proper for the District Registrar, when he makes an order of this kind to sign it himself, but the effect of this order cannot be regarded as invalid because the District Sub Registrar signed it for him (*James and Dhavle, JJ*) THAKUR PRASAD MARWARI v CHAMAN RAM MARWARI.

174 I C 385=4 B R 439=10 R P 508=1938 P.W N 31=19 Pat L T. 67=16 Pat. 660=A.I R. 1938 Pat 136.

——S 35—*Partial registration of document —* …

174 I C 738=1938 A.L R 324=10 R A 615=1938 A W.R (H.C.) 98=1938 A.L J. 23=A.I R. 1938 All 170.

——S 35—*Scope—Conditions for registration—Refusal of registration—Grounds for—Wrong refusal—If can be ignored—Document executed by A for* …

… *attorney — Effect—Deed —If a* … *behalf of* B *also*

S 35 of the Registration Act … document should be admitted to h… the person by whom it purpo… registration of it can be … only if he denies the executi… executed by *A* on his own … attorney of *B*, *A's* admission … enough so far as he is himself concerned or so far as *B* is concerned. It is not necessary for him to produce any power of attorney on behalf of *B*, nor, is it necessary for the registering officer to look at any power of attorney for registering that document. But if the registering officer for any reason refuses registration as against *B* on the ground of invalidity of a power of attorney, and the endorsement also says that the document was not registered as against *B*, the document cannot be regarded as having been registered on behalf of *B* as well on the ground that the refusal of registration was wrong The document can be regarded as registered only on behalf of *A* in his individual capacity and not in his capacity as general attorney of *B*. (*Bajpai and Hamilton, JJ.*) SULTAN AHMAD KHAN v SIRAJUL HAQUE. I L.R. (1938) All. 125=174 I C … 1938 …

——S. 35, C … *Value—Plea of insanity of executant.* …

ignorance of or discarding same will not bind the second Appellate Court (*Puranik, J*) MST. HAZRABI v MST. FATMABI. 177 I C 80=11 R N. 103=A.I.R. 1938 Nag 204.

——S 35 (3) (b)—*Registration of mortgage deed—Executant, if a major—Presumption*

There is no presumption from the fact of registration of a mortgage deed that at the time of its execution the mortgagor was a major and not a minor. (*Biswas and Edgley, JJ*) SM SARASWATI DEBI v. BAHADUR LAL MISSIR. 68 C L J. 28.

——S. 36—Failure to observe procedure under—Attendance of executants not procured—If affects right of suit under S. 77. *See* REGISTRATION ACT, SS 77 AND 36 16 Pat. 660.

——S. 47—*Document in respect of certain property* … h … y … e … e

… ment as the document when registered took effect from the date of execution. (*Fazl Ali and Rowland, JJ.*) FAIYAZUDDIN KHAN v. MT ZAHUR BIBI. 174 I C. 372=4 B.R 433=1938 P.W N. 445=10 R P. 506=19 Pat L.T. 383=A I R 1938 Pat. 134.

… *— When complete—* … *f registration, if can* …

… executed by the … execution, though … alid. Failure to … of the execution, …

1938 A.W R (H C) 370=11 R A. 128=1938 A.L R. 633=1938 A L J. 557=A I R 1938 All. 431.

——S. 49—Applicability — Permanent lease—No rent payable for first seven faslis—Provision for payment of Rs. 19-12 0 per year subsequently for ever—Deed not registered—Admissibility to prove terms of grant *See* MADRAS ESTATES LAND ACT, S. 26 (3). A I.R. 1938 Mad 769.

——S. 49—Collateral purpose—Letter giving addressee lien over certain properties—Recital that properties are now with another having equitable mortgage—Admissibility to prove acknowledgment of equitable mortgage. *See* LIMITATION ACT, S. 19. 1938 M.W N. 785.

——S 49—"*Collateral purpose*" — *Meaning of*— … *f mortgage*— … *00—Admissi-* … *for proof of* … *idence—Ad-* … *missibility.*

… 'o have … ght to … and the … The … hat on … mort- … o show … could …

REGISTRATION ACT (1908), S. 49.

unregistered were

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establishing the plaintiff's case, by reason of S. 91 of the Evidence Act. (*Wort, A C.J. and Manohar Lall, J.*) BHUKHAN MIAN *v* RADHIKA KUMARI DEBI 19 Pat.L.T. 489=176 I C. 35=11 R P. 38=4 B.R. 667=1938 P.W N. 789=A I.R. 1938 Pat. 479.

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of S. 49, and such

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dew and Thakor, JJ.) RUDRAGOUDA *v.* BASANGOUDA 175 I C. 361=10 R B 538=40 Bom L R. 202=A I.R 1938 Bom 257.

——S. 49—*Compromise relating to immovable property—Unregistered deed—Admissibility*

REGISTRATION ACT (1908), S. 49.

A deed of compromise relating to immovable property executed in the course of a suit and not recorded in the

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MALAN

L R 115.

gistered—

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inadmis-

d cannot

of land

of the deed. He can treat the other party who has taken possession of the land under the inadmissible deed as a trespasser. (*Abdul Rashid, J.*) SAID HASSAN *v.* QALANDAR. 40 P.L.R. 224.

——S. 49—*Invalid usufructuary mortgage—Admissibility to prove nature of possession.*

repayment of

ats, evidence of

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urpose of show-

ion (*i.e.*) that

J.) U THET

ang L R 442.

for—Admis-

TRATION ACT, SS. 17 (1) (*b*) AND 49. 40 Bom L R 952.

——S 49—Scope—Patta unregistered—Admissibility to prove title in suit for possesion *See* EVIDENCE ACT, S. 91. 18 Pat L T. 1012.

——S. 49—*Unregistered lease—Admissibility to prove rent.*

ered Patta

NCE ACT.

L T. 1012.

mortgage

mance—If

not itself sufficient to support a suit for specific performance of an agreement to transfer. The document being a document of transfer and intended to be such must be registered in order to give it validity as a mortgage. It is not open to a party to ignore the provisions of the

REGISTRATION ACT (1908), S. 51.

law of registration and to treat it as a contract to transfer—which it is not—and to compel the transfer to execute a formal transfer. The unregistered mortgage cannot itself be regarded as the contract for purposes of the new proviso added to S 49 of the Registration Act, when there is no proof of any separate agreement to mortgage prior to the execution of the mortgage deed. *(Madhavan Nair and Stodart, JJ.)* SOMAPPA v. OFFICIAL RECEIVER OF BELLARY.

A.I.R. 193

——S 51—*D*

Validity of registr

Where a documen

partnership deed un

by mistake entered in the book pertaining to alienations, the document is not validly registered as an alienation but is only validly registered as a partnershi *(Dalip Singh and Skemp, JJ.)* MADAN LAL v BISHAN. A.I.R. 1938 La

——S 60 (2)—Scope—Burden of proof—Endorsement by Registrar recording payment of consideration for bond—Effect of—Denial of consideration—Onus. *See* DEED—CONSIDERATION. 1938 P.W.N. 773

——S 73 (1)—"*Age*

Meaning of.

The words "as afores

authorised as aforesaid"

Act are not mere surplus

Mahomed, J.) GANESH DASS v MAHOMED HUSSAIN. 40 P.L.R. 718=A.I.R. 1938 Lah. 763

——S. 75—*Document presented more than 30 days*

The procedure to be followed after presentation under

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A.I.R. 1938 Lah 255.

——Ss. 77 and 36—*Right of suit under S 77—If affected by failure of Sub-Registrar to secure attendance of executants.*

RELIGIOUS ENDOWMENT.

MARWARI. 174 I.C. 385=19 Pat L.T. 67=1938 P.W.N. 31=4 B.R. 439=10 R.P. 508=16 Pat. 660=A.I.R. 1938 Pat 136.

——S. 77—*Suit under—Proof required of plaintiff.*

It is settled law that in a suit under S 77 of the Registration Act all that is required to be shown by the plaintiff is whether the document was executed or not, (or also in some cases whether certain requirements of the law as to presentation for registration

176 I.C. 140=11 R.R. 28=A.I.R. 1938 Rang. 176.

(3) C. P. CODE, S. 92.

——*Alienation of property belonging to—Recovery—Procedure.*

4 B.R. 556=10 R.P. 592=A.I.R. 1938 Pat. 394

——*Dedication—Construction of consent decree—Dedication or recognition of previous dedication*

I.L.R. (1938) 2 Cal. 312.

——*Dedication—Construction of will—Dedication to munder or to deity.*

A Digambari Jain resident of Calcutta by his will dedicated certain premises in the following terms —"To the *Manderjee* at Sri Calcutta of the Tairopuntee Amnjo I have given and cause to be given thus:—The *puccah* house for my own dwelling situate in Sootaluttee, which said house I give in the *Manderjee*. The rent that is

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RELIGIOUS ENDOWMENT.

———*Mahant—Powers of alienation—Permanent lease by—Validity.*

A limited owner, such as the *Mahant* of an Asthal, is competent to create derivative tenures and estates conformable to usage. The idol's estate is left with the benefit of an augmentation of rent from time to time, and it is within the competence of the *Shebait* to grant a permanent lease in the ordinary course of management. (*Fazl Ali and Manohar Lall, JJ.*) MAHABIR DAS *v.* UDIT NARAIN VARMA. 17 Pat 594= 19 Pat L T. 570=A.I R. 1938 Pat. 613

———*Temple—Public or private—Tests to determine—Proof of user by public and of separate endowment in trust for deity—Presumption—User by public—If to be presumed to be as of right—Instances of exclusion due to personal ill-will—Effect of.*

... want of a regular access to the temple cannot be taken to be of much use in arriving at a conclusion as to the ...

for user by the public (unless the contrary is establish- ...

175 I C. 738=11 R.M. 1 (2)=1937 M.W N. 1171= A.I.R. 1938 Mad. 209.

RELIGIOUS ENDOWMENTS ACT (XX OF 1863), S. 14—*Applicability—Suit against trespassers—Maintainability*

S. 14 of the Religious Endowments Act that in a suit under that section the Court has not to pass any order ...

feasance etc. A suit under the section can lie only against those pe... vested or to whom ... can lie against ... (*Divatia and Sen,* ... I.L R. (1938) Bo... 40 Bom L R 365=A I.R 1938 Bom. 311.

———Ss 14 and 18—*Private wakf—Powers of District Judge as regards removal of mutawalli and accounts.*

REVENUE RECORDS.

Where an office of the mutawalli of a wakf falls vacant, the District Judge is entitled under proper circumstances to make an appointment to fill the vacancy but he has no general power to remove a mutawalli in miscellaneous proceedings on an application by one of the beneficiaries, his power in this respect being limited and defined by Ss. 18 and 14, Religious Endowments Act, 1863 and S. 92, C. P. Code, nor has he power in such proceedings to require the mutawalli of a private endowment to render accounts. (*James, J.*) MAHOMED YUSUF *v.* MAHOMED AYUB. A. I R. 1938 Pat 537.

RELIGIOUS OFFICE—*Transfer—Office of temple trustee—Transfer for monetary consideration—Legality.*

A transfer of the office of trustee of a temple for a monetary considerat... ...d ...w. ...L. ... = ...7.

RELIGIOUS PROCESSION—*Right to conduct in public streets and before mosques—Limitations to exer-...*

Where a decree entitled the Hindus to take processions ...

...MINAL LAND AMENDMENT ACT (XX OF 1932), S. 7. (1938) 2 M L.J. 863.

RESTITUTION OF CONJUGAL RIGHTS—*Suit for—Powers of Court.*

No Court can compel a man or woman to live with one another against their will. (*Davis, J. C. and Weston, J.*) RUKIBAI *v.* PARTABRAI. ...

It is not for Revenue Courts to go into intricate ques... ...nd by the ... Revenue ... ...rd, J.M.) ... A.L.J. (Supp.) 33= 1938 A.W R. 61 (B.R.).

REVENUE RECORDS.

See also (1) EVIDENCE.

(2) EVIDENCE ACT, S. 35.

RELIGIOUS ENDOWMENT.

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UDIT NARAIN VARMA. 17 Pat 594=19 Pat L.T. 570=A.I.R. 1938 Pat. 613

——*Temple—Public or private—Tests to determine—Proof of user by public and of separate endowment in trust for deity—Presumption—User by public—If to be presumed to be as of right—Instances of exclusion due to personal ill will—Effect of.*

temple or not, but where it is found that such public as is available in the locality is in the habit of worshipping in

for user by the public (unless the contrary is established)—particularly when the character of the temple, its construction, the arrangement of the various parts of the temple and the nature of the deities installed there are

only be ascribed to the private character of the institution A single instance of exclusion which is clearly the

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175 I.C. 738=11 R.M. 1 (2)=1937 M.W.N. 1171=A.I.R. 1938 Mad 209

RELIGIOUS ENDOWMENTS ACT (XX OF 1863), S. 14—*Applicability—Suit against trespassers—Maintainability*

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40 Bom L.R. 365=A.I.R. 1938 Bom. 311.

——Ss 14 and 18—*Private wakf—Powers of District Judge as regards removal of mutawalli and accounts.*

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A. I. R. 1938 Pat 537.

RELIGIOUS OFFICE—*Transfer—Office of temple trustee—Transfer for monetary consideration—Legality.*

177 I.C. 823=47 L.W. 529=(1938) M.W.N. 393=A.I.R. 1938 Mad 713=(1938) 1 M.L.J. 517.

Where a decree entitled the Hindus to take processions through the public streets with music, etc., 'except during the hours of public congregational worship in the mosque' it was *held*, that the exception introduced was a proper

such a solution, as it would be inconsistent with the existing state of the law. (*Pandrang Row and Venkataramana Rao, JJ*) RANGIAH CHETTY *v.* HASSUMIAH.

1938 M.W.N. 119=47 L.W. 683=A.I.R. 1938 Mad 305=(1938) 2 M.L.J. 165.

REPEALING AND AMENDING ACT (XX OF 1932) S. 4—Scope—Effect on Criminal Law Amendment Act (1932)—Latter, if repealed *in toto*. *See* CRIMINAL LAND AMENDMENT ACT (XX OF 1932), S. 7.

(1938) 2 M.L.J. 863.

RESTITUTION OF CONJUGAL RIGHTS—*Suit for—Powers of Court.*

No Court can compel a man or woman to live with one another against their will. (*Davis, J. C. and Weston, J*) RUKIBAI *v.* PARTABRAI.

A.I.R. 1938 Sind 233.

1938 A.W.R. 61 (B.R.).

REVENUE RECORDS.

See also (1) EVIDENCE.
(2) EVIDENCE ACT, S. 35.

SEA CUSTOMS ACT (1878), S. 30

under assessment at time and place of importation—Cl. (a), if inapplicable for want of sales of other goods.

The application of Cl. (*a*) of S 30 does not depend upon any hypothesis to the effect that at the time and place of importation an indefinite amount of further goods added to the available supply has had effect upon the wholesale price Ordinarily, at the time of making out the bill of entry there will not be an actual price relating to the goods themselves and complying with the requirements of Cl. (a) As a rule, therefore, the price appropriate to the goods under assessment will under the clause be deduced, if at all, from actual prices relating to other goods of like kind and quality. But if there is an actual price for the goods themselves at the time and place of importation and if it is a "wholesale cash price less trade discount", the clause is not inapplicable for want of sales of other goods. The goods under assessment may under Cl. (a) be considered as members of their own class even although at the time and place of importation there are no other members and the price obtained for them may correctly represent the price obtainable for goods of the like kind and quality at the time and place of importation. (*Sir George Rankin.*) FORD MOTOR COMPANY, LTD., *v.* SECRETARY OF STATE. 65 I A. 32= I L.R 1938 Bom . . 10 B.P.C . 1938 A.W R. (P . 1938 M.W N 134=47 L W . 1938 O.W N. 1 . 66 C.L J. 466=40 Bom . 32 S L.R. 261=A I.R. 1938 P C. 16= (1938) 1 M.L J. 161 (P C.).

—— S. 30 (a)—*Price, if can be arrived on basis of actual price.*

The word ascertainable' in Cl. (*b*) of S. 30 imports more than could be satisfied by the result of a mere estimate. On the other hand the language of the section—' or are capable of being sold"—does not exclude all possibility of arriving at the price defined by Cl. (a) upon the basis of an actual price, . adjustment may be needed to eliminate *e. g.*, between cash and a month's credit *Rankin.*) FORD MOTOR COMPANY LTI. . TARY OF STATE. 65 I A. 32= I.L R . 1938 . 1938 M.W. N 134– . 1938 O W N. 188=1938 A L R 110= 66 C.L J. 466=40 Bom L R. 269=4 B.R 287= .

under the Act. It is only in the former class of cases .

examinable by a Civil Court except when they have acted without jurisdiction or in contravention of fundamental principles of judicial procedure. The finality attaching to decisions or orders of customs officers, enacted by the last clause of S. 188, is not limited to decisions or orders passed by customs authorities when acting under S. 182 and the succeeding sections, but that finality should not be interpreted to take away the jurisdiction of Civil Courts in which the customs authorities act on a wrong interpretation of the Sea Customs Act or the Tariff Act and impose a higher customs duty. It is too much to contend that every order of a customs officer under the Act in whatever connection passed must be regarded as in the nature of an adjudication by a tribunal. (*Varadachariar and Pandrang Row, JJ.*) MASK & CO. *v.* SECRETARY OF STATE. I.L R. 1938 Mad. 1040= (1938) M.W N. 341=47 L.W. 505= A I R. 1938 Mad. 608.

SECURITIES ACT (1920), S. 21.

SECURITIES ACT (X OF 1920), S. 16—*Scope of—Renewal of Government promissory notes—Effect of.*

The holder of a renewed Government promissory note obtains a new promise from Government free from any equities or disputes which might have attached to the prior note. S. 16 of the Securities Act provides in terms that a renewed Government promissory note is to be deemed to constitute a new contract between the Govern- . all . *t.*) . 1938 M W N. 1938 A.L.R. 492= 11 R P C. 1=4 B R. 677=1938 O A 930= 19 Pat L T. 625=I L R 1938 Bom. 602= 40 Bom L R. 868=1938 A.L J. 807= A.I.R. 1938 P C. 191=(1938) 2 M L J. 169 (P C.).

—— S. 21—*Construction—Implied right of indemnity under old Act, if abrogated—Statute—Construction—New Act—Extent of protection offered.*

As a matter of construction the view cannot be . existed in the repealed Act of 1886. A statute is *prima* . 1920 to abrogate the common law indemnity existing under the repealed Act the Legislature would it seems . There . g such . rued as . nt from . v right. . NK OF . 502= . 1009= . 957= . 304= . C 1= . 625= 40 Bom L R. 868=1938 A L J 807= .

Government promissory note and su . indorsed

SALE OF GOODS ACT (1930), S. 20.

warranty implied by law of merchantability. The condition as to merchantability requires the goods to be reasonably fit to be sold as goods of the particular description. The other condition as to fitness requires the goods to be reasonably fit for use for the particular purpose for which they were ordered. In both cases they are required to be intrinsically fit, and not fit having regard to some particular legislation or particular rules framed by the state or a third party. (*Derbyshire, C.J. and Ameer Ali, J.*) JOSEPH MAYR *v.* PHANI BHUSAN GHOSH. I.L.R. (1938) 2 Cal. 88.

——Ss. 20 and 22—*Applicability—Sale of goods by lot to be delivered at place of buyer—Goods to be tran-*

goods delivered to him at the place of delivery, property in the goods cannot pass to the buyer until the goods, if so required by the buyer, are weighed at the place of delivery. In such a case S. 22 applies. This is particularly so in the case of goods such as scrap iron, the weight of which decreases to certain extent in transit. (*Rupchand Bilaram, Ag. J C and Lobo, J.*) UGARCHAND GAJANAND *v.* MOTIRAM GHANSHAMDAS.
173 I C. 535 = 10 R S. 216 = A.I R 1938 Sind 18.

——S. 25 (2)—*Applicability—Goods consigned by seller to buyer by rail—Railway receipt in seller's name sent to banker with instructions not to part with same until payment by buyer—Effect—Goods to be weighed by buyer at destination to ascertain price—Acceptance of*

there is a *prima facie* presumption that the seller intends to reserve t
goods and that tl
pass to the buyer
ment is fulfilled.
of exchange or hun
on the seller, has n

was defaulted similar action was taken. In respect of the third instalment when a suit was filed, it was contended that the cause of action for the second and third suits was the same and hence the third suit was barred by O 2, R. 2, C. P. Code.

SEA CUSTOMS ACT (1878), S. 30.

Held, that looking to the terms of the contract, the intention of the parties and the circumstance, in that objection on similar grounds was not taken in the second suit, the causes of action for default of each instalment were separate and that the suit was not barred. (*Roberts, C.J and Dunkley, J.*) RATILAL KOTHARI *v.* LAKMICHAND. 178 I C 538 = A I R. 1938 Rang. 364.

——S. 54 (2)—Re sale—Delay—Effect on damages. *See* SALE OF GOODS—RIGHT OF RE SALE.
1938 A.W.R. (H C.) 149.

——S. 62—*Scope of—Absence of appropriation—Agreement as to re sale on breach and as to recovery of godown rent—Validity of.*

v. NEW SAVAN SUGAR AND GUR REFINING CO., LTD. 175 I C. 552 = 10 R A. 695 = 1938 A L R. 442 = 1938 A.W R. (H C.) 149 = 1938 A L J 227 = A.I.R. 1938 All. 272

SEA CUSTOMS ACT (VIII OF 1878), S. 30—*Import of cars—Distributor paying price notified in current price list before delivery—Delivery f o r. made within few days of arrival of cars—Price to distributor if wholesale cash price.*

The appellants, importers into India of cars issued from time to time a price list and the terms of business between them and the distributors of such cars, were that the retail price to be charged by the distributor to the public was that stated in the price list current at the
and the price
lants was the
istributor had
Delivery was
re in the case
t of Bombay
itself, *viz* Ford Automobiles (India), Ltd, to whom
wn warehouse in Bombay.
price list was in all cases
, and the same was true
appellants and the distri-
e to their distributors

40 Bom. L R. 269 = 4 B R. 287 = 32 S L R. 264 = A I R. 1938 P.C. 15 = (1938) 1 M.L J. 161 (P.C).

——S. 30 (a)—"*Goods of the like kind and quality*"—*Existence of wholesale cash price for goods themselves*

SEA CUSTOMS ACT (1878), S. 30

under assessment at time and place of importation—Cl. (a), if inapplicable for want of sales of other goods.

The application of Cl. (*a*) of S 30 does not depend upon any hypothesis to the effect that at the time and place of importation an indefinite amount of further goods added to the available supply has had effect upon the wholesale price Ordinarily, at the time of making out the bill of entry there will not be an ing to the goods themselves and requirements of Cl. (a) As a rule, appropriate to the goods under as the clause be deduced, if at all from actual prices relating to other goods of like kind and quality. But if there is an actual price for the goo time and place of importation and cash price less trade discount", inapplicable for want of sales of goods under assessment may under as members of their own class even and place of importation there : and the price obtained for them the price obtainable for goods quality at the time and place *George Rankin.*) FORD MOTO SECRETARY OF STATE. 65 I A. 32= I L.R 1938 Bom 249=1938 A.L J. 87= 10 R P.C. 175=42 C W N. 1938 A W R. (P C) 23=172 I C 1938 M.W N 134=47 L W 205=1938 O L R 1938 O.W N. 188=1938 A L R. 66 C.L J. 466=40 Bom L R. 269=4 B R. 287=32 S L.R. 264=A I R 1938 P C. 15=(1938) 1 M L J 161 (P C).

——S. 30 (a)—*Price, if can be arrived on basis of actual price.*

The word ascertainable' in Cl. (*b*) of S. 30 imports more than could be satisfied by the result of a mere estimate On the other hand the language of the section—' or are capable of being sold"—does not exclude all possibility of arriving at the price defined by Cl. (a) upon tl adjustment m, *e. g.*, between *Rankin*) FO TARY OF STA I.I. 1938 M.W. N 66 C L J

——S. 188—*Juris. or order of customs. Order imposing higher customs duty on wrong interpretation of Act—Suit in Civil Court—If barred.*

Civil Court from questioning them. Adjudications by customs officers dealing with an offence committed under S. 182 of the Act have *prima facie* to be regarded as adjudications by a special tribunal, and as such are not examinable by a Civil Court except when they have acted without jurisdiction or in contravention of fundamental principles of judicial procedure. The finality attaching to decisions or orders of customs officers, enacted by the last clause of S. 188, is not limited to decisions or orders passed by customs authorities when acting under S. 182 and the succeeding sections, but that finality should not be interpreted to take away the jurisdiction of Civil

Act in whatever connection passed must be regarded as in the nature of an adjudication by a tribunal. (*Varada*-

SECURITIES ACT (1920), S. 21.

deemed to constitute a new contract between the Government and the person to whom it is issued and all (*Lord Wright.*) NDIA, LTD. =48 L W 8= R. (P C.) 197= 42 C.W N. 957=67 C L J. 466=1938 O L R. 304= 11 I' 19

A I R. 1938 P C. 191=(1938) 2 M.L J. 169 (P C.).

——S. 21—*Construction—Implied right of indemnity under old Act, if abrogated—Statute—Construction—New Act—Extent of protection offered.*

As a matter of construction the view cannot be

ued as t from v right. (*Lord Wright.*) SECRETARY OF STATE *v* BANK OF

Security not taken—Government forced to pay damages for conversion of original note—If entitled to indemnity from party who requested for renewal.

A broker forged the indorsement of the holder of a Government promissory note and subsequently indo

SALE OF GOODS ACT (1930), S. 20.

warranty implied by law of merchantability. The condition as to merchantability requires the goods to be reasonably fit to be sold as goods of the particular description. The other condition as to fitness requires the goods to be reasonably fit for use for the particular purpose for which they were ordered. In both cases they are required to be intrinsically fit, and not fit having regard to some particular legislation or particular rules framed by the state or a third party. (*Derbyshire, C.J. and Ameer Ali, J.*) JOSEPH MAYR *v.* PHANI BHUSAN GHOSH. I.L.R. (1938) 2 Cal. 88.

——Ss. 20 and 22—*Applicability—Sale of goods by lot to be delivered at place of buyer—Goods to be transhipped*

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place of delivery. In such a case S. 22 applies. This is particularly so in the case of goods such as scrap iron, the weight of which decreases to certain extent in transit. (*Rupchand Bilaram, Ag. J C. and Lobo, J.*) UGARCHAND GAJANAND *v.* MOTIRAM GHANSHAMDAS. 173 I.C. 535 = 10 R.S. 216 = A.I.R. 1938 Sind 18.

buyer at destination to ascertain price—Acceptance of hundi by buyer—If passes property in goods to seller

there is a *prima facie* presumption that the seller intends to reserve to himself the right of disposal of the goods and that the property in the goods does not pass to the buyer until the condition as to actual payment is fulfilled The fact that the buyer accepts a bill

barred.

Parties to a contract agreed to deliver and take 1500 bags of corn in three instalments of 500 bags each. When the first instalment was defaulted, a suit was filed in respect of that instalment, when the second instalment was defaulted similar action was taken. In respect of the third instalment when a suit was filed, it was contended that the cause of action for the second and third suits was the same and hence the third suit was barred by O. 2, R. 2, C. P. Code.

SEA CUSTOMS ACT (1878), S. 30.

Held, that looking to the terms of the contract, the intention of the parties and the circumstance, in that objection on similar grounds was not taken in the second suit, the causes of action for default of each instalment were separate and that the suit was not barred. (*Roberts, C.J and Dunkley, J.*) RATILAL KOTHARI *v.* LAKMICHAND. 178 I C 538 = A I R. 1938 Rang. 364.

——S. 54 (2)—Re-sale—Delay—Effect on damages. *See* SALE OF GOODS—RIGHT OF RE SALE 1938 A.W.R. (H C.) 149.

——S. 62—*Scope of—Absence of appropriation—Agreement as to re sale on breach and as to recovery of godown rent—Validity of.*

NEW SAVAN SUGAR AND GUR REFINING CO., TD. 175 I C. 552 = 10 R A. 695 = 1938 A L R. 442 = 1938 A.W.R. (H C.) 149 = 1938 A L J 227 = A I R. 1938 All. 272

SEA CUSTOMS ACT (VIII OF 1878), S. 30—*Import of cars—Distributor paying price notified in current price list before delivery—Delivery f o r. made within few days of arrival of cars—Price to distributor of wholesale cash ...*

s into India of cars issued and the terms of business ributors of such cars, were that the retail price to be charged by the distributor to the public was that stated in the price list current at the and the price lants was the istributor had Delivery was e in the case t of Bombay itself, *viz.*, Ford Automobiles (India), Ltd, to whom delivery was made at their own warehouse in Bombay. The price mentioned in the price list was in all cases for a vehicle in running order, and the same was true of the contract between the appellants and the distri-

ellants' price to their distributors within the meaning of S. 30 It e cars were invoiced a few days ship and the price became fixed were therefore sales at on in every reasonable

rhead charges had no under Cl. (*a*) of S. 30. OTOR COMPANY, LTD. 65 I A. 32 = I.L.R. 1938 Bom 249 = 1938 A.L J 87 = 10 R P C 175 = 42 C.W N. 257 = 1938 A.W R. (P C) 23 = 172 I C 771 = 1938 M W N. 134 = 47 L.W. 205 = 1938 O L R 76 = 1938 O.W N. 188 = 1938 A L.R. 110 = 66 C.L J. 466 = 40 Bom L R. 269 = 4 B.R. 287 = 32 S L R 264 = A I.R. 1938 P.C 15 = (1938) 1 M.L J. 161 (P.C.).

——S. 30 (a)—"*Goods of the like kind and quality*"—*Existence of wholesale cash price for goods themselves*

SEA CUSTOMS ACT (1878), S. 30

under assessment at time and place of importation—Ct.

ing to the goods themselves and complying with the requirements of Cl. (a). As a rule, therefore, the price appropriate to the goods under assessment will under the clause be deduced, if at all, from actual prices relating to other goods of like kind and quality. But if there is an actual price for the goods themselves at the time and place of importation and if it is a "wholesale cash price less trade discount", the clause is not inapplicable for want of sales of other goods. The goods under assessment may under Cl. (a) be considered as members of their own class even although at the time and place of importation there are no other members and the price obtained for them

the price obtainable for goods

quality at the time and place

1938 O.W N. 188 = 1938 A L R. 110 = 66 C.L.J. 466 = 40 Bom L R. 269 = 4 B R. 287 = 32 S L R. 264 = A I R. 1938 P C. 15 = (1938) 1 M.L J. 161 (P C.)

——S. 30 (a)—*Price, if can be arrived on basis of actual price.*

The word ascertainable' in Cl. (*b*) of S. 30 imports more than could be satisfied by the result of a mere estimate. On the other hand the language of the section—"or are capable of being sold"—does not exclude all possibility of arriving

Cl. (a) upon the basis of an actu

adjustment may be needed to el

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I.L R. 1938 Bom. 249 = 1938 A L J 87 = 10 R P C. 175 = 42 O W.N. 257 = 1938 A W R (P C.) 28 = 172 I C 771 = 1938 M.W..N. 134 = 47 L W 205 = 1938 O L R 76 = 1938 O.W N. 188 = 1938 A L R 110 = 66 C L J. 466 = 40 Bom. L R. 269 = 4 B R 287 = 32 S.L.R. 264 = A.I R 1938 P.C. 15 = (1938) 1 M L J. 161 (P C)

SECURITIES ACT (1920), S. 21.

without jurisdiction or in contravention of fundamental

interpretation of the Sea Customs Act or the Tariff Act and impose a higher customs duty. It is too much to contend that every order of a customs officer under the Act in whatever connection passed must be regarded as in the nature of an adjudication by a tribunal. (*Varadachariar and Pandrang Row, JJ*) MASK & CO. *v.* SECRETARY OF STATE. I.L R. 1938 Mad 1040 = (1938) M.W.N. 341 = 47 L W. 605 = A I R. 1938 Mad. 608.

SECURITIES ACT (X OF 1920), S. 16—*Scope of—Renewal of Government promissory notes—Effect of.*

The holder of a renewed Government promissory note

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constitute a new contract between the Govern-

the person to whom it is issued and all

A I.R. 1938 P C 191 = (1938) 2 M.L J. 169 (P C.).

——S. 21—*Construction—Implied right of indemnity under old Act, if abrogated—Statute—Construction—New Act—Extent of protection offered.*

facie to be construed as changing the law to no greater extent than its words or necessary intendment require. S. 21 was not in the earlier Act of 1886. If it had been intended by the insertion of that section in the Act of 1920 to abrogate the common law indemnity existing under the repealed Act the Legislature would it seems have used words clearly expressing that intention. There is no reason to justify reading in or implying such

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as entitled to be
indemnified against the loss incurred a
office had issued the renewed note only
the Bank of India. The fact that no
at the time of the renewal could not al
indemnity. (*Lord Wright.*) SECRETAI
BANK OF INDIA, LTD.
175 I C. 327 (P.C.)=I L.R.
48 L.W. 8=193
1938 A.W.R. (P C.) 197=
67 C L.J. 456=19
1938 M W N 753=1938 A L R 492=
11 R P.C 1=4 B.R. 677=1938 O.A. 930=
19 Pat L T 625=40 Bom L R. 868=
1938 A.L J. 807=A I R. 1938 P C 191=
(1938) 2 M L J. 169 (P C).

SETTLEMENT RECORDS.

See (1) EVIDENCE.
(2) EVIDENCE ACT, S. 35.
(3) REVENUE RECORDS.

SHIPPING—*Liability of shipowner—Unpaid vendor of goods shipped, holding Mate's receipt—Shipowner refusing to redeliver goods in recognition of vendor's charge—Liability of—Purchaser hypothecating goods shipped before notice to shipowner of vendor's charge—Effect of.*

An unpaid vendor of goods shipped on board a steamship who holds the Mate's receipt for the said goods, with the benefit also of a charge clause in his contract of sale, has not only a right against the defaulting purchaser, but also a right in damages against the shipowner on the basis of an action for conversion or trespass, where the shipowner refuses to r
recognition of the unpaid vendor's
ded that the shipowner has notice
before delivery at the
and even if the ship ow

shipowner. Such a hypoth
better title to the mortgagee
possessed. A.I R. 1931 Cal.
HUKUMCHAND JUTE MILL
TAL BAG CO. 173 I.C. 486=10 R C 528=
A.I R. 1937 Cal. 319.

——*Mate's receipt—If document of title—Right of person holding Mate's receipt—States in—Value of—Bill of lading—Distinction.*

The Mate's receipt is not a document of title to the goods shipped. Its transfer does not pass property in the goods nor is its possession equivalent to possession of the goods. It is not conclusive and its statements do not bind the shipowners as do the statements in a bill of lading signed within the master's authority. It is, however, *prima facie* evidence of the quantity and condition of the goods received and *prima facie* it is recipient or possessor who is entitled to have the bill of lading issued to him. But if the Mate's receipt acknowledges receipt from a shipper other than the person who actually receives the Mate's

n that ship-
freight, the
deed bound
on. If the
... is given
express notice that he is not to issue the bill of lading without the Mate's receipt or to any one but the person

(1938) 1 M.L J. 834 (P.C.).

——*Rules governing navigation in Hughli—R. 5—"Turning points or bends of the river"—Meaning.*

Although in construing the phrase "turning points or bends of the river" Court has to refer not to the navigable channel but to the river as a whole and in all its breadth, yet such considerations are not necessarily conclusive of the question, and the Court has to consider the matter with reference to the channel and from the practical standpoint of a navigator. The prohibition cannot be supposed to extend to all parts of the river where the channel is not completely straight, but must be interpreted with regard not only to the aggregate amount of deflection but to its gradualness or abruptness, which is only to say that the deflection must be considered in relation to the distance to be travelled. (*Sir George Rankin.*) MALACCA MARU *v.* MARIENFELS.
176 I C. 886=1938 O L R. 378=
11 R.P.C 68=1938 A L R. 720=4 B R. 819=
43 C.W.N. 29=A I R 1938 P.C. 263=
(1938) 2 M L J 992 (P.C.).

purpose. There is also
...ection which cuts down
wide words intentionally used

This S. 8 puts no limitation of time within which such
This power may be exercised
in Court or before the case is
Court, or it may be exercised
... case has commenced in that Court. All the three sections are easily reconcilable. That being so, there is no reason why the very wide words of S. 13 should not receive their full and proper meaning. Thus S. 13 permits the Public Prosecutor to withdraw in the Sessions Court from the prosecution of an accused person at any time before an order of conviction or acquittal has been passed even though the Commissioner or District Magistrate has not exercised his discretion to refer the case to the Council of Elders, before the trial in that Court commenced. (*Rupchand Bilaram, Ag. J.C. and Lobo, A J.C.*) MINHO *v.* EMPEROR. 32 S L R. 129=173 I.C 325=
10 R S 201=39 Cr L J. 294=A I R 1938 Sind 9.

——Ss. 12 and 13—*Reference to Council of Elders—If and when can be done without reference to Court.*

Where an accused person is charged with an offence punishable with death or transportation for life, his trial

really commences when the case is proceeded with in the

173 I.C. 325 = 10 R.S. 201 = 39 Cr.L.J. 294 = A.I.R. 1938 Sind 9.

SIR LAND—*See* LANDLORD AND TENANT—SIR LAND.

SLANDER. *See* TORT—DEFAMATION.

SLANDER OF TITLE. *See* TORT.

A.I.R. 1938 Nag. 84.

SOCIETIES REGISTRATION ACT (1860), Ss. 3, and 19—*Presumption of proper registration.*

Presumption that an association is duly registered arises not on the certificate of registration granted by the Registrar under S. 3, but on the copies of the Rule Regulations and Memorandum certified under which constitutes them *prima facie* evidence matters therein contained. (*Lord Thankerton.*) DER SINGH v. SUNDER SINGH. 65 I.A. : 172 I.C. 993 = I.L.R. 1938 Lah 32 S L.R. 350 = 1938 A.L J. 194 = 1938 O.W.N. 245 = 1938 O.L.R. 104 = 1938 A.L.R. 138 = 1938 A.W.R. (P.C.) 74 = 40 P.L.R. 247 = 4 B.R. 317 = 66 C.L J. 524 = 10 R P C. 202 = 1938 O A. 371 = 42 C.W.N. 930 = 1938 M W.N. 621 = 1938 P.W.N. 548 = 40 Bom L.R. 724 = 47 L.W. 239 = A.I.R. 1938 P.C. 73 = (1938) 1 M.L J. 359 (P C.).

174 I C. 463 = 4 B.R. 446 = 10 R P. 523 = A.I.R. 1938 Pat. 162.

——**S. 6 (b)**—*Construction and scope—Decree in contravention of—If void—Power of executing Court to refuse execution—Question whether decree is in contravention of section—If can be raised in execution S. 27—Distinction.*

S. 6 (*b*) of the Santal Parganas Settlement Regulation clearly imposes on a Court which is about to pass a decree a duty to observe the rule

That is not so in the case of a decree alleged to be in contravention of S. 6. The question whether the amount awarded is in excess of that permitted by S. 6 (*b*) is one which ought properly to be agitated before and considered by the trial Court and passes the decree or in

Regulation. (*Agarwala* KUMARI v. KISHORILAL 177 I.C. 253 =

——**S. 27**—Scope—Duty of executing Court under—

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ACT, Ss. 58 AND 100. 40 Bom.L R 545.

——*Contract to sell—Terms of conveyance—Duty of Courts.*

ing specific performance of an agreement to sell, is bound to put the parties in the same situation in which they were on the date of the agreement. The recitals of representation in the sale deed must reflect the spirit of

——*Right to—Doctrine of mutuality—Meaning of.*

A contract to be specifically enforceable must be mutual, which means that at the time of the contract is must be enforceable by either of the parties against the other. Thus, if on account of certain circumstances existing at the time of the contract, as for example personal incapacity of one of the parties or the nature of the contract itself, it was incapable in law of being enforced

A suit based on title under S. 8 of the Specific Relief Act should not be allowed to be changed into one under S. 9 in which the cause of action is not title but dispossession. But this should not be taken to mean that possession cannot be evidence of title or that a finding as to title based solely on evidence of possession is illegal. (*Weston.*) ABDUL JABBAR v. GANESH.

1938 A.M.L.J. 54.

——**S. 9**—*Decree or order under—If revisable under S. 115, C. P. Code.*

under S. 115, C. P. Code, from may be passed under S. 9 of t by any subordinate Court. *Verma, J.*) BADRULZAMAN v. H. 1938 A W.R. (H.C.) 598 = L.J. 864 = 1938 A.L R. 887 = A I R. 1938 All. 635.

——**Ss. 12 and 27-A**—*Oral agreement to lease—If can be specifically enforced.*

An agreement to lease which does not create a present demise is not required to be in writing or registered, and

——Ss. 14, 15 and 16—*Relative scope and applicability of—Prior and later agreements to sell—Single item common to both—Reliefs in respect of—Considera-*

favour.

Held, that the question whether the plaintiff was entitled to relief depended on the application of Ss. 14 to 17 of Specific Relief Act which "constitute a complete code within the terms of which relief of the character

——Ss. 18 (b) and 25 (b)—*Lessee not entitled to sub-lease without lessor's consent—Agreement to sub-lease without such consent—If can be enforced specifically—Objection to specific performance raised by sub-lessee in second appeal—Permissibility.*

S. 18 of the Specific Relief Act lays down certain rights which the purchaser or the lessee of a property has against the vendor or lessor who, having an imperfect title thereto, contracts to sell or let. It does not make the contract invalid. Where, therefore, a lessee who has no right to sub-lease without the consent of the lessor enters into a contract to sub-lease without such consent, there is no reason why the contract cannot be specifically enforced if the lessee obtains the concurrence of his lessor when called upon to do so by the sub-lessee or by the Court. An objection that the lessee is not entitled to claim specific performance of the contract to sub lease as he did not obtain the consent of the lessor for

Mere delay in suing may not be sufficient to deprive a plaintiff of the relief of specific performance, but where a plaintiff has taken no steps to prevent the other party from entering into a contract with a third party in respect of the subject matter of the contract, and the third party expends money, *e.g.*, by improving the property and discharging an encumbrance on the property in respect of which a contract of sale is entered into, if the plaintiff institutes a suit for specific performance just when the period of limitation is about to expire, no decree for specific performance can be granted, because.

the third party.
SUBBARAYADU
M.W.N. 1158.
etting up false

is an equitable
, and a plaintiff
who sets up a false case cannot expect a Court of equity to grant him such relief. (*Leach, C.J. and Madhavan Nair, J.*) SUBBARAYADU *v.* TATAYYA.
1937 M.W.N. 1158.

——Ss. 25 (b) and 18 (a)—*Contract to sub-lease for*
lease had only two years to
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years to run under his own lease, but under the terms of
ht to renew the lease,
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n the ground that he is
not in a position to give the lessee a title free from

——S. 27 (b)—*Absence of notice of earlier contract—Onus.*

The onus is upon the subsequent purchaser to prove that he is a transferee without notice of the earlier contract so as to bring himself within the exception provided by S. 27 (*b*) of the Specific Relief Act. (*Mukherjea, J.*) DEBENDRA NATH MITRA *v.* LALIT KRISHNA MITRA. 42 C.W.N. 1090.

——Ss. 27-A and 12—Oral agreement to lease—If can be specifically enforced. *See* SPECIFIC RELIEF ACT, SS. 12 AND 27-A. I.L.R. (1938) 1 Cal. 563=42 C.W.N. 97=A.I.R. 1938 Cal. 136.

——S. 31—*Scope of—Failure to avail of remedy—Effect.*

Where a purchaser because of a clerical mistake in the sale deed, fails to obtain mutation of names, he could at that stage have instituted a suit under S. 31 of the Specific Relief Act. But he was not bound to do so, as
he fact of its
chaser of the
BARSATI *v.*
O.A. 823=
C O.) 104=
W.N. 1074.

——Ss. 33 and 34—Rectification—Powers of Court—Suit for sale on mortgage—Wrong description of property—Oral evidence as to mistake—Admissibility—Relief on basis of rectification—If awardable. *See* LIMITATION ACT, ART. 96. 47 L.W. 661=(1938) 1 M.L.J. 806

——S. 38—*Rescission of contract—Condition as to repayment of benefit—Scope and effect of*

He has to make the payment because the contract is voided, the contract is not voided on condition of his making such payment. The Court in passing a decree in a suit by the aggrieved party for rescission of the con-

paying to the other party the amount (benefit) received under the contract within a certain time, this does not

sequence that on his failure to make this payment, not that his suit shall fail altogether but that the other party can proceed to execute the decree against him for recovering the amount. (*Mya Bu and Mackney, JJ.*) REV. PATRICK *v.* MAUNG E. A.I.R. 1938 Rang. 408.

——S. 39—*Cancellation—Person not a party to deed, if can seek.*

Under S. 39 of the Specific Relief Act it is not neces-

ed by him as a condition to his recovering possession of the alienated property. Where the alienee has chosen to advance the money to the minor with knowledge of the minority, it would not be proper to order a refund. But where an innocent purchaser or alienee has advanced money to the minor without any knowledge of the minority, an order for refund can properly be made against the minor, even though there has been no misrepresentation on the part of the minor as to his age. (*Madhavan Nair, O C. J. and Krishnaswami Ayyangar, J.*) HANUMANTHARAO *v.* SITHARAMAYYA.
1938 M.W.N. 1076=48 L.W. 604.

——S. 42—*Applicability—Suit to declare that property is judgment debtor's and attachable and saleable.*

Two judgment-debtors allowed the wife of one of them to take mutation on a false allegation of an oral gift of certain share to which they were entitled and to allege possession under it.
to acquiesce in the mutation
a suit for a declaration thai
longed to the judgment debt...
saleable in execution of his decree.

——S. 42—*Association and members—Declaration of members' right to inspect records—If can be granted.*

In a suit to restrain the defendant Association from preventing the plaintiffs who are its members from
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Court—Injunction maintaining status quo ante *not granted.*

within the scope of the suit, and the effect of which might be to embarrass other parties and complicate other transactions which are not before the Court. (*Mukherjee, J.*) THE ALL-INDIA TEA AND TRADING CO., LTD. *v.* UPENDRA NARAYAN SINHA. 42 C.W.N 774=67 C.L.J. 143.

——S. 42—*Declaratory suit—Cause of action—Attempt to attach plaintiff's goods.*

de. (*Tek*
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Lah. 574.
nability—
obtained
prior to suit.

Where the plaintiff is a co-sharer and her possession was as such and where prior to the declaratory suit, she had obtained mutation of her name over zamindari as well as house property, and where such possession as could under the circumstances be obtained was obtained by the plaintiff, her suit does not offend any provision of law contained in S. 42 of the Specific Relief Act. (*Collister and Bajpai, JJ.*) KOMAL *v.* GUR CHARAN PRASAD. 175 I C. 263=10 R A. 661=
1938 A.L R. 392=1938 A W.R. (H C) 168=
1938 A L J. 235=A.I R. 1938 All. 242.

——S. 42—*Declaratory suit—Maintainability—Suit to declare that plaintiff is gaddnashin of Khankah—Allegation by defendant that he is in joint possession of properties with plaintiff—Prayer for possession—If necessary.*

defendant who merely claims to be in joint poss

——Ss. 14,
bility of—Pri
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suit for specific performance of the agreement in his favour.

Held, that the question whether the plaintiff was entitled to relief depended on the application of Ss. 14 to 17 of Specific Relief Act which "constitute a complete code within the terms of which relief of the character

apply as it could not be said that the plot in question bears only a small proportion to the whole, that S. 15 also did not apply as the plaintiff had expressed his unwillingness to pay the purchase price for the remaining plots, on payment of which alone the plaintiff can get specific performance; that S. 16 cannot be said to apply, for there was only one contract to sell, and in the absence of evidence to the contrary, the presumption is that it is an entire contract intended to be dealt with as a whole
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177 I.C. 746=11 R L. 356=40 P.L R. 202= A.I.R. 1938 Lah. 360.

——Ss. 18 (b) and 25 (b)—*Lessee not entitled to sub-lease without lessor's consent—Agreement to sub-lease without such consent—If can be enforced specifically—*

enforced if the lessee obtains the concurrence of his lessor when called upon to do so by the sub-lessee or by the Court. An objection that the lessee is not entitled

——S. 22—*Delay in suing—If bar to relief.*

Mere delay in suing may not be sufficient to deprive a plaintiff of the relief of specific performance; but where a plaintiff has taken no steps to prevent the other party from entering into a contract with a third party in respect of the subject-matter of the contract, and the third party expends money, *e.g.*, by improving the property and discharging an encumbrance on the property in respect of which a contract of sale is entered into, if

or specific performance
is about to expire, no
n be granted, because
that would be doing an injustice to the third party.
., *J.*) SUBBARAYADU
1937 M.W.N. 1158.
tiff setting up false

...nance is an equitable relief lying in the discretion of Court; and a plaintiff who sets up a false case cannot expect a Court of equity to grant him such relief. (*Leach, C.J. and Madhavan Nair, J.*) SUBBARAYADU *v.* TATAYYA.
1937 M.W N. 1158.

——Ss. 25 (b) and 18 (a)—*Contract to sub-lease for*
ad only two years to
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his contract.
to sub-lease for five
sor had only two
..t under the terms of
his unexpired lease he had a right to renew the lease, and subsequent to the contract to sub-lease he got a renewed lease in accordance with those terms for another period, his claim for specific performance of the contract to sub-lease cannot be refused on the ground that he is not in a position to give the lessee a title free from reasonable doubt (*Nasim Ali and Mukherjea, JJ.*) GOKUL CHANDRA *v.* HAJI MOHAMMAD.
I.L.R. (1938) 1 Cal 563=176 I.C. 832=11 R.C. 173=

I.L.R. (1938) 1 Cal. 563=42 C.W.N. 97= A.I.R. 1938 Cal. 136.

——S. 27 (b)—*Absence of notice of earlier contract —Onus*

The onus is upon the subsequent purchaser to prove

nforced. *See* SPECIFIC RELIEF
I.L.R. (1938) 1 Cal. 563=
W.N. 97=A.I R. 1938 Cal. 136.
f—Failure to avail of remedy— Effect.

Where a purchaser because of a clerical mistake in the sale deed, fails to obtain mutation of names, he could at

1938 O.W N. 1074.

——Ss. 33 and 34—Rectification—Powers of Court —Suit for sale on mortgage—Wrong description of property—Oral evidence as to mistake—Admissibility— Relief on basis of rectification—If awardable. *See* LIMITATION ACT, ART, 96. 47 L.W. 661= (1938) 1 M.L.J. 808

——S. 38—*Rescission of contract—Condition as to repayment of benefit—Scope and effect of*

owner is not valid beyond her life time, and the widow dies pending the litigation, it cannot be held that the plaintiff can no longer continue his suit on the ground that the widow having died he is entitled to sue for recovery of the property concerned. The proviso to S. 42 of the Specific Relief Act does not plaintiff from prosecuting his suit for because the widow has died and the plai for recovery of the property, although if t to get any real benefit he has to follow suit for recovery within the period of lim legal for him to prosecute his suit for d

extent of share in tauzi in estate—Absence of prayer for cancellation or correction of entry in land registry—Effect—Suit—If maintainable.

A suit for a declaration that certain tauzi should correspond of the original estate cannot be

——S. 42,
Maintainabilit
administrator
fendant in possession or control of institution—Injunction against defendant—If further relief.

Where the plaintiff claims to be a trustee and administrator of certain institution of which neither he nor defendant is in possession or control of the management, a suit for mere declaration under S. 42 is maintainable; and where it is not open to the plaintiff to pray

to supply electricity—Start of work to supply electricity by Government within area of license—Licensee, if enti-

under
on for
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J.) CHANDI RAM *v.* SECRETARY OF STAT

with him, it is not necessary for the plaintiff to include a prayer for possession but he must however include a prayer for ejectment of the defendant. It is open to him to sue also for an injunction restraining the defendant from interfering with his rights as a manager of the khankah. (*Bhide, J.*) MOHAMMAD MUSA *v.* NABI BAKHSH. 177 I.C. 781=11 R.L. 364=40 P.L.R. 516=A.I.R. 1938 Lah. 616.

——S. 42—*Declaratory suit—When maintainable.*

Under S. 42 of the Specific Relief Ac
make a declaration where the plaint
seek further relief than a mere declarat
to do so. Where a plaintiff asked
that the record of rights was wrong an
might be corrected, such a suit is maint
Ghose, J.) BHABADAS MUKHERJEE
KAMINI DEBI.

——S. 42—*Declaratory suit—When maintainable—Suit to declare decree nullity, owing to adverse interest of guardian ad-litem—Prayer for possession, if necessary*

character of decree, doubtful—If a ground for refusal.

The granting of a declaratory decree is discretionary, and ordinarily the circumstance that the decree will not

conditions—Principles.

Though a Court in its discretion can refuse to give a declaratory decree and can also impose certain condi-
judicial
rations.
HARAN
. 661=
) 168=
1938 A.L.J. 235=A.I.R. 1938 All. 242.

possession — Amendment of plaint—Permissibility in second appeal.

Plaintiff was the owner of certain jewels which he entrusted to one *S* for sale. *S* committed breach of trust and pledged them with the defendant Bank. *S* was convicted and the property was ordered to be returned by the plaintiff who got them. In revision, however, the High Court ordered the jewels to be returned to the Bank. Plaintiff who had the jewels with him handed them over to the Magistrate and at once filed a suit in the Civil Court for a declaration that he was entitled to possession of the jewels. He also at the same time applied to the Magistrate to retain the jewels

or to send them to the Civil Court, and they were so sent.

Held, that the suit for bare declaration was not maintainable and that he was bound to ask also for possession, he having been not in possession of the jewels at the time he instituted the suit. The Court holding the jewels did not hold them as agent of the plaintiff, but as agent of the defendant.

Held, further, that the plea of non maintainability of

R. 63, C. P. C.—Frame of. *See* C. P. CODE, O. 21, R. 63. 47 L.W. 724=(1938) 1 M.L.J. 803.

——S. 42, Proviso—*Applicability — Suit under O. 21, R. 103, C. P. Code—Claim to mere declaration*

A.C.J. and Varma, J.) RAM CHANDRA GANGA BUX *v.* SUNDER LAL SINGH. 176 I.C. 862=
R.P. 120=19 Pat L.T. 916=
455=A.I.R. 1938 Pat 558.

ar under—If applies—Suit
right in possession, for declaration of title—Fresh start—When available.

A mortgagee of occupancy right brought a suit the redemption after mutation had been attested for a declaration that only certain khasras had been redeemed and the others were wrongly included in the mutation. *He* alleged that he had got a correction mutation entered but it was rejected. The plaintiff was in possession of the property in suit.

Held, that the frame of the suit for a declaration was not incorrect. The Proviso to S. 42, Specific Relief

the redemption mutation was attested. The mere fact that the plaintiff himself tried to get correction made and failed afforded him no fresh cause of action. (*Almond, J.C. and Mir Ahmad, J.*) AZIZUR RAHMAN *v.* ABDUR RAHIM. 176 I.C. 486=11 R. Pesh. 12=A.I.R. 1938 Pesh. 28.

——S. 42, Proviso—*Scope of—Alienation by Hindu widow—Suit by reversioner for declaration that it is not valid beyond life time of widow—Death of widow pending suit—Effect—Suit—If can be continued—Discretion of Court.*

Where a Hindu reversioner sues for a declaration that an alienation made by the widow of the last male

owner is not valid beyond her life time, and the widow dies pending the litigation, it cannot be held that the plaintiff can no longer continue his suit on the ground that the widow having died he is entitled to sue for *recovery of the property concerned. The proviso to* S. 42 of the Specific Relief Act does not pr[illegible] plaintiff from prosecuting his suit for a [illegible] because the widow has died and the plaintif[illegible] for recovery of the property, although if the [illegible] to get any real benefit he has to follow it up with a suit for recovery within the period of limitation. It is [illegible]

[illegible]

Suit to declare decree void—Maintainability without prayer for possession or injunction. *See* MINOR—DECREE AGAINST. **40 Bom.L.R. 127.**

———S. 42, **Proviso**—*Scope—Suit for declaration of extent of share in tauzi in estate—Absence of prayer for cancellation or correction of entry in land registry—*

[illegible]

is no prayer for a cancellation or correction of the entry in the Land Registration Register. The Civil [illegible]

[illegible]

fendant in possession or control of institution—Injunction against defendant—If further relief.

Where the plaintiff claims to be a trustee and administrator of certain institution of which neither he nor defendant is in possession or control of the management, a suit for mere declaration under S. 42 is main*tainable, and where it is not open to the plaintiff to pray* [illegible]

65 I.A. 106 = I.L.R. 1938 Lah. 63 = 32 S.L.R. 350 = 1938 A.L.J. 194 = 1938 O.W.N. 245 =

[illegible]

an application under S. 45 of the Specific Relief Act. (*Panckridge, J.*) GARRISON ENGINEER *v.* CORPORATION OF CALCUTTA. **42 C.W.N. 789.**

———**Ss. 54 and 57**—*Grant by Government of license to supply electricity—Start of work to supply electricity by Government within area of license—Licensee, if enti-*

[illegible]

Government and therefore that also is not a considera-

[illegible]

J.) CHANDI RAM *v.* SECRETARY OF STATE. **40 P.L.R. 160.**

SPECIFIC RELIEF ACT (1877), S. 56.

——S. 56—*Grant of injunction — Discretion of Court.*

Injunction is a discretionary form of specific relief, and under S. 56 of the Specific Rel
may refuse to grant an injunction if
conduct has disentitled himself to s
Mohammad, J.) CHANDI RAM *v.*
STATE FOR INDIA IN COUNCIL. 40 P.L.R. 577.

——S. 56—
persons from d
ing exclusive
Custom making

cular houses. Nor can a custom making scavenging rights *res commercium* be recognised by the Courts, as it is contrary to the public good and unreasonable. The custom, if allowed, would turn out to be an oppressive monopoly, and can never be sustained in a Court of Law. (*Venkataramana Rao, J.*) RAGHUDU *v.* ERRAIYA
1938 M.W.N. 806=48 L.W. 258=
A.I.R. 1938 Mad. 881.

——S. 56—*Scope—Act done by public officer in discharge of duty under S. 37, Mysore Land Revenue Code—Suit for injunction to restrain—Bar of.*

It is not open to a Civil Court to prevent a public officer, such as the Deputy Commissioner acting under

in same Court for grant of—Competency.

An injunction to restrain proceedings in a Court,

Per *Bhide, J.*—It is well established that when it is open to a person to sue for possession, he cannot be

and Din Mohammad, JJ.) MASJID SHAHID GANJ *v.* SHIROMANI GURDWARA PARBANDHAK COMMITTEE

STAMP ACT (1899), S. 12.

AMRITSAR. 40 P.L.R. 319=
175 I.C. 945=11 R.L. 91=
A.I.R. 1938 Lah. 369 (F.B.).

struck

llowed
debtor
would be a mere "acknowledgment" on which a stamp

it would be a "bond" and
y. (*Tek Chand and Dalip*
D DAULAT RAM *v.* ATA
7 I.C. 270=11 R.L. 285=
93=A.I.R. 1938 Lah. 503.
partition—If an 'instrument of partition'.

A decree for a partition is an instrument of partition (*vide*, S. 2 (15) of the Stamp Act) and as such has got to be engrossed on stamp paper. (*Tekchand, J.*) RAM NARAIN KAUL *v.* BISHAN RANI. 40 P.L.R. 2=
A.I.R. 1938 Lah. 321.

——S. 2 (15)—*Instrument of partition—'Preliminary decree' in partition suit—Strangers in possession also made parties—Directions as to division and as to payments of definite sums by parties inter se—Nature of decree.*

Where in a suit for partition of joint family property to which strangers in possession of certain items of pro-

1938 M.W.N. 666=A.I.R. 1938 Mad. 307.

——S. 2 (17)—*'Mortgage deed'—What amounts to.*

npted any exhaustive list
llation may be done in
ect of the cancellation
unfit for further use in
and whether this has
ase is a question to be
determined on an examination of the instrument in question. The section does not lay down that the
it would be impossible
to use the stamp again.
a promissory note clearly
initials his signature on the adhesive stamps on it, the mere fact that the date on which the executant initialled does not appear on any of them, does not make it "not

effectually
ZAMINDA …

——S. … as agreem … SCH. I, ARTS (1), 5 (c), AND S. 35.

… rejected as against him

Where the execution of a document which is not duly stamped is admitted by one of the defendants, the document cannot be rejected as against him (*Jai Lal, J.*) DULI CHAND MAIDHAN *v.* PANTHI.
178 I.C. 197=40 P.L.R. 231=A.I.R. 1938 Lah. 511

——S. 35—*Entry as to mortgage made in ordinary bahi not duly stamped—Secondary evidence of such entry* …

… *stamp of proper value—Acting upon—Execution ordered—Objection at subsequent executions, if can be taken*

Where a partition decree falls strictly within the terms of S. 2 (15) of the Stamp Act, but which is not duly engrossed on non-judicial stamp of proper value, and which was in fact acted upon and execution also ordered, …

the Court w… admitting it … S. 35 of th… ment shall … which such … (*Burn and* … NAMMAYYA …
A.I.R. 1938 Mad. 307.

——S. 35—Promissory note—Insufficiently stamped—Suit on debt maintainability. *See* EVIDENCE ACT, S. 91. (1938) 2 M.L.J. 189 (F.B.)

——S. 35 … *and applicab* … *note—Admis* … *extend limita* …
Where an … contains an … precluded by …

… 11 R.N. 163=1938 N.L.J. 145=
A.I.R. 1938 Nag. 294.

Promissory note insufficiently … *f payment on—Admissibility*

… note is insufficiently stamped … evidence under S. 35 of the Evidence Act, if there is an endorsement of payment on the … an acknowledgment of the … evidence for the purpose of … nt. (*Madhavan Nair, J.*) … RAYUDU.
1938 M.W.N. 875=48 L.W. 498=(1938) 2 M.L.J. 846.

——S. 35—Scope—Promissory note not properly stamped—Admissibility—Suit on debt—Maintainability. *See* EVIDENCE ACT, S. 91.
1938 M.W.N. 722=(1938) 2 M.L.J. 189 (F.B.).

——S. 36—*Document admitted in evidence—If can be challenged later on—Admission in evidence—What* …

… by no stretch of imagination can it be said that the Judge did not apply his mind to the admission of the document. (*Thomas, C. J. and Zia-ul-Hasan, J.*) AVADH SINGH *v.* TAHKUR RANDHIR SINGH.
178 I.C. 338=1938 O.L.R. 479=1938 O.A. 838=1938 A.W.R. (C.C.) 114=1938 O.W.N. 1085.

——S. 36—"*Admitted in evidence*"—*Meaning of.*
… after deciding the … ot, it must be held … ithin the meaning … missibility cannot … he Judge endorses … it is insufficiently … in, and the same … ls of the Judge, it … tted in evidence. … *v.* NAGABUSHANAM. 1938 M.W.N. 900=48 L.W. 494=A.I.R. 1938 Mad. 938=(1938) 2 M.L.J. 478.

——S. 36—*Appellate Court, when precluded from questioning a wrong admission of a document.*
Where a trial Court admits only a part of an insuffi- …

… BHAGWAN DAS *v.* AMARDAS SHAMDAS.
176 I.C. 312=11 R.Pesh.
A.I.R. 1938 Pe…

——S 36—*Document admitted during minority of party — Improper representation —Right to impugn admissibility.*

Where a document was exhibited in proceedings in which the minor was not properly represented, and where on his attaining majority, he was allowed to reopen the whole proceedings, he is not precluded from impugning the admissibility of such a document. S. 36 of the Stamp Act cannot debar him. The admission of evidence though it is an act of court, it is a matter in which parties have a voice. (*Weston.*) HARI SINGH *v.* KUNDAN MAL. 1938 A. M.L J. 74.

——S. 36—*Objection subsequent to admission of document—Entertainability.*

It is not open to a Court to entertain an objection to the admissibility of a document on the ground that it is not duly stamped, after it has once been admitted in evidence. (*Jai Lal, J.*) DULICHAND MAIDHAN *v.* PANTHI. 178 I.C. 197=40 P.L R. 231= A.I.R 1938 Lah 511

——Ss. 37 and 42 (2)—*Applicability—Partition decree, not stamped—Execution ordered— . stamping—Execution proceedings, if validat spectively.*

Held, that S. 37 of the Stamp Act, could be invoked for it had no application and that the case was not one in which an instrument had been written on a stamp of sufficient amount, but of improper description.

Held, further, that there was no provision of law which could validate a decree with retrospective effect and tha terms is not retrospective in its *Lakshmana Rao, JJ.*)
47

——S. 40 (1) (a) an
Reference to High Co
tency—Conclusiveness c
Ss. 60 AND 40.
1938 O A. 765

——Ss. 60 and 40—*Reference under S. 60—Stage when to be made—If competent after impounding and Collector's certificate under S. 40 (1) (a).*

The proper time for making a reference under S. 60 of the Stamp Act is, when the Court is in doubt as to the amount of duty payable and certainly not after the document had been impounded by it and the Collector

A.I R. 1938 Oudh 226 (F.B.).

——S 60 (1)—*Abatement—Death of party—Effect.*

A reference made under S. 60 (1), Stamp Act, does not abate or become incompetent by reason of the death of the party who has executed the document which has given rise to the reference. (*Courtney Terrell, C.J., James and Manohar Lall, JJ.*) KHETRAMONI DEBYA, *In the matter of.* 17 Pat. 95=172 I.C. 847= 4 B.R. 198 (1)=10 R.P. 357 (1)=18 Pat.L.T. 933= A.I.R. 1938 Pat. 33 (S.B.).

——Art. 1— *Applicability — Acknowledgment of correctness of account—Stamp duty.*

An acknowledgment of the correctness of account does not require a stamp to be valid. (*Dhavle, J.*) RAMPRABHA OJHA *v.* BISHUNATH OJHA. 174 I C. 585=4 B.R. 461=10 R P. 625= A I R. 1938 Pat. 139.

——Sch. I, Art. 1—Applicability—Admission of liability saving limitation—Stamp duty—If necessary. *See* LIMITATION ACT, S. 19. 20 N.L J. 276.

——Sch. I, Arts. 1 and 5—*Balance struck in account book—If acknowledgment or agreement.*

In a suit based on a balance struck in the account book of the plaintiff, the phraseology of the account was "baqi rehe lene lekha ker ke char so tees rapia." This was signed by the defendants.

Held that the document in suit was an agreement and not a mere acknowledgment as it contained a promise to pay. (*Jai Lal, J.*) DULICHAND MAIDHAN *v.* PANTHI. 178 I.C. 197=40 P.L R. 231= A.I.R. 1938 Lah. 511.

PRASAD *v.* MT. SUNKI 177 I O. 889= A.I.R. 1938 Nag. 464.

——Sch. I, Arts. 33 and 55—*Applicability—Hindu widow in possession of property allotted by decree in partition suit with interest similar to that of a life- . . . s having . . . ossession*

with rights in the said properties similar to those of a Hindu widow in the estate of her deceased husband and was in possession of the properties in virtue of the decree and was in enjoyment of the usufruct thereof. She desired to surrender her interest in the properties to her sons who would succeed to the property in the ordinary course of her death and for that purpose she executed a deed whereby she transferred the right to

istrument of gift
ale to the Stamp
5; (2) that stamp
operties conveyed

as described in the deed, the value to be stated in the deed being not the capital value of the property conveyed, but the present value of the life interest of the widow, whatever that might have been at the time of the execution of the deed. (*Courtney Terrell, C.J. James and Manohar Lall, JJ.*) KHETRAMONI DEBYA, *In the matter of.* 18 Pat.L.T. 933= 17 Pat 95=172 I.C 847=4 B R. 198 (1)= 10 R P. 357 (1)=A.I.R. 1938 Pat. 33 (S.B.).

——Sch. I, Art. 35 (a) (iv)—*Applicability—Lease—Monthly tenancy—No definite term provided.*

STAMP ACT (1899). Sch. I. Art 40.

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1938 A.L.R. 409=1938 A.W.R. (H C.) 195= 1938 A.L.J. 324=A.I.R. 1938 All. 304.

——Sch. I, Arts 40 and 57—*Applicability—Securi-ty*

In

the

security bond cannot amount a contract, as the Court is not a juridical person and is incapable of contracting. (*Leach, C. J., Varadachariar and Mockett, JJ.*) ABUBACKER LABBAI *v.* CHINNATHAMBI ROWTHER.

I.L.R. 1938 Mad. 460=174 I.C. 587= 10 R.M. 725=1938 M.W.N. 190=47 L.W. 154= A.I.R. 1938 Mad. 262=(1938) 1 M.L.J. 159 (F.B.).

——Sch. I, Art. 55—Applicability—Hindu widow in possession of property allotted to her by decree of

require
Act.

STAY
pleting
stay—

The question of status of parties is of course one to be decided according to the law of domicile of the

(*Wadia, J.*) RATANSHAW DINSHAWJI *v.* BAMANJI. 175 I.C. 200=10 R.B. 527=40 Bom L.R. 141= A.I.R. 1938 Bom 238.

SUCCESSION ACT (1925), S. 211.

A.I.R. 1938 All. 640

——S. 63 (a)—*Execution of will—Validity—Testator affixing his mark—His hand guided by another in doing so.*

any assistance. (*McNair, J.*) AMULYA KUMAR BOSE, *In the goods of.* 42 C.W.N. 649

——S. 63 (c)—*Due attestation—Presumption.*

Where the testator was roused from unconsciousness in order to sign the will and the attestation took place immediately after his signature and the attesting witnesses were in close proximity to the testator in the same room.

Held, that it was not an excessive presumption to say

which takes away the right of revision by High Court. (*Bhide, J.*) BUA DITTA *v.* SAHIB DIYAL.

Succession Act which limits the power of dispo[sal of] the heir-at law over such estate, merely because [grant] of administration has been made, Nor does

SUCCESSION ACT (1925), S. 306.

——S. 306—*'Special proceeding'—Construction—If covers summary proceeding under S. 235 of the Companies Act.*

The phrase 'special proceeding' in S. 306 of the Succession Act is an extremely wide one and there is nothing

nature of a suit. In any way 'special proceeding' is wide enough to cover summary proceeding of the Companies Act. (*Harries, J.*) OFFIC DATORS *v.* JUGAL KISHORE. 1938 A. J 1938 A.W.R.

——Ss. 307 to 315—*Scope and effect with life estate and daughter having absolute estate under will—Powers of alienation as administrators.*

S. 307 and the succeeding sections of the Succession Act make provisions for the powers of an administrator

the property but that a daughter having an absolute estate has such powers as given her by the Succession Act. The daughter as an administrator is limited to the powers granted to her under the Act, but her powers as having an absolute estate would be different. The same has to be said of a widow. (*Wort and Varma, JJ.*) MANKI KUAR *v.* HANSRAJ SINGH. 173 I.C. 983= 10 R P 467=4 B R 370= 19 Pat L

——S. 353—*Right t ground for refusing i and future interest—Dis —If justified.*

There is a statutory right to recover interest under S. 353 of the Succession Act, and the fact that a claimant waits for several years before he comes to Court is no ground for refusing interest, if his claim is within time. But the question of interest *pend* future interest is entirely within the disc Court, and an appellate Court will not the discretion exercised by the trial Court

19 Pat L.T. 202=A.I.R. 19

——S. 361 and Civil Procedure Code, S. 52—*Creditor's right to refund—Property in possession of executor as specific legatee—Enforcement of decree—Attachment of legacy or separate suit.*

A claim for refund by an unpaid creditor based upon

and sale of the property in the hands of the executor specific legatee. The creditor need separate suit. (*Panckridge, J.*) r. SAMARENDRA NATH MITTER.

——S. 370—Mortgage, if a secu SION ACT, SS. 381, 370 AND 214.A.I.R. 1938 Pat. 68.

SUCCESSION ACT (1925), S. 388.

——S. 370 (1)—*Scope—Deceased leaving will—Succession certificate—Grant of—If barred.*

Where the deceased person has left a validly executed will, all the estate of that person vests in the executor of the will and no succession certificate can be granted in of any part of that estate. The grant of a ion certificate in such a case is barred by S 370 Succession Act. (*Pollock, J.*) KISAN GOPAL v. JNNILAL. 172 I C. 372=10 R.N. 198= 20 N.L J. 272=A I R 1938 Nag. 47.

tary in

and a take a after the death of the deceased. (*Almond, J.C. and Mir Ahmad, A.J.C.*) BALDEV *v.* PEOPLES BANK OF NORTHERN INDIA LTD. 173 I.C. 58=10 R. Pesh. 47= h. I.

or sue

A mortgage is not a debt within the meaning of S. 381, and it is not a security within the provisions of S. 370. Where therefore a person brought a suit on a mortgage executed in favour of his deceased brother and produced a succession certificate.

Held, that the production of a succession certificate was not a sufficient title on which to sue on the mortgage.

RAMU SINGH *v.* AGHORI SINGH. 173 I.C. 487=4 B.R. 291=1937 P.W.N. 793= 10 R.P. 416=19 Pat.L.T. 558= A I R 1938 Pat 68.

A.I.R. 1938 Sind 160.

. 387—Succession certificate—Value in proving U. P. LAND REVENUE ACT, S. 34. 1938 R.D. 42=1938 A.W.R. 21 (B R.).

. 388—*Appeal from order of Senior Sub- Forum.*

the Senior Sub Judges have been invested with o hear applications under the Succession Act, have not been so empowered by a Notification cal Government published in the local official Gazette as required by S. 388, the normal course of lation is order under sioner's Court and not to the Court of the District Judge.

SUCCESSION CERTIFICATE ACT (1889), S. 244

(*Almond, J C.*) MT DURGA DEVI *v* RUP CHAND. 177 I.C 705=11 R. Pesh. 34= A.I.R. 1938 Pesh. 62.

SUCCESSION CERTIFICATE ACT (VII OF 1889), S. 214—Scope—Promissory note in favour of manager of Hindu joint family—Death of manager—Suit by survivors—Competency—Production of certificate after suit—Sufficiency. *See* NEGOTIABLE INSTRUMENTS ACT, S. 8. 40 Bom.L R. 964.

SUFEDPOSH—*Appointment of—Government servant in service—Eligibility.*

The appointment as *sufedposh* of a Government servant with 20 years of service still to run and who cannot consequently take office for that period, is not justified although a competent substitute could be found to do the work. (*Dobson*) GHULAM QADIR *v.* CHAUDHRI LAKHI SINGH. 17 Lah.L.T. 21.

SUGAR EXCISE DUTY ACT (XIV OF 1934), S. 8—*Applicability—Failure to submit return in form B under Art.* 5 *of the Sugar Excise Duty Order—If*

——S. 8—*Offence—Late payment of duty—Effect.*

A late payment of the duty assessed is not an evasion of

Excise Du

v. EMPER

10 B.

——S.

Assessment in February 1937, *for duty in respect of December*, 1936 *and January*, 1937—*Effect of—Order for payment earlier than end of February—Propriety—Payment by end of February—If sufficient—*

December, 1936, and January, 1937, in February 1937, the order of assessment must be construed as an assessment of the duty payable for January,1937, and the duty so assessed becomes payable only by the end of February 1937, though the Collector may fix an earlier date for payment. If the payment is made by the end of February, that is sufficient; the failure to pay on the date fixed by the Collector before the end of the month is not an offence under S. 8 of the Act. (*Manohar Lall,*

Failure to keep accounts—Offence.

SURETY BOND.

Failure to keep correct daily accounts as required by Art. 4 of the Sugar Excise Duty Order is not a failure to supply any information as is contemplated by S. 8 of the Sugar Excise Duty Act, but failure to keep any account at all, is an offence punishable under Art. 8 of Sugar Excise Duty Order. (*Manohar Lall, J.*) BEHARI RAM *v.* EMPEROR. 175 I.C 531=4 B R. 602=10 R.P 634=39 Cr.L J. 610=19 Pat. L.T. 415=1938 P.W.N. 426=A.I.R. 1938 Pat. 440.

——**Art. 15**—*Power of Collector under to accept money in lieu of punishment.*

The language of Art. 15 makes it quite clear that the Collector has the power to accept a sum of money only in lieu of punishment for breach of any of the Sugar Excise Duty Order, but not of the Sugar Excise Duty Act. But the imposition of a penalty under Art. 15 cannot be justified unless the duty payable after assessment has not been paid within the time fixed, having regard to S. 4 (1) of the Sugar Excise Duty Act. (*Manohar Lall, J.*) BEHARI RAM *v.* EMPEROR.

... P. 634= ... P. 415= ... Pat. 440.

—*Parti-*

value of ... urpose of ... plaintiff ... is share. ... I. BOOK, ... N. 161= ... Mag. 149. ... *risdiction*

... he proper ... first and ... isdiction. ... CHARAN

NANDA *v.* SAILAJA CHARAN NANDA. I.L R. (1938) 2 Cal. 411=42 C.W.N. 667.

SURETY.

See also (1) C. P. CODE, S. 54 (4) AND 145.
(2) CONTRACT ACT, SS. (128-147)
(3) CR P. CODE, SS. 122 AND 514.

its own terms. Where bond definitely says that if a particular appeal (the number of which is specifically given in the bond) is decided in favour of the plaintiff (opposite party) the executant of the bond shall pay a certain amount into Court, the surety would be liable only in the particular event of the appeal ending in favour of the plaintiff. His liability cannot be extended to the contingency of their being a second appeal or Letters Patent appeal against the decision of the appeal specifi- ... of language in the bond ... So that if the appeal ... versely to the plaintiff, ... and the fact that ulti- ... a Letters Patent appeal cannot entitle him to proceed against the surety under

SURETY BOND.

the bond. (*King and Krishnaswamy Ayyangar, JJ.*) PARAMASIVAN PILLAI *v.* RAMASWAMI CHETTIAR. 48 L.W. 760=1938 M.W.N. 1158.

——Bond by — Construction — Undertaking to produce judgment-debtor on fixed date—Failure to produce him or to appear himself—Plea of illness of judgment-debtor—Surety, if absolved from liability. *See* C. P. CODE, S. 55 (4). 47 L.W. 408.

——*Bond—Correction —Mistake of Court —Equities—Power to impose terms—Surety's liability—If extends* ... *of appeal*

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appeal,
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appeals were dismissed...

... mistake of some official of the ...

sons affected to proceed under ... of the Specific Relief Act.

Held further that, on the bond as it stood, the surety was under no liability at all. As the bond had to be corrected before the surety could become liable, the Court was entitled, while correcting the bond, to direct the decree-holder to pursue his remedy first against the judgment debtor before executing the decree against the surety.

Held also that the costs of the second appeal could not be added to the decree amount to secure which the bond was given. (*Stone, C. J. and Puranik, J.*) MADHORAO NARAYANRAO *v.* HARINATH BHIKAJI. A.I.R. 1938 Nag. 259.

——*Bond mentioning his liability to pay the debt in case petition for setting aside* ex parte *decree failed—Liability enforceable in spite of Court's granting of time to judgment-debtor.*

If a surety's obligation under a bond was not merely to produce the debtor and to pay up if the debtor failed to do so but also to pay the debt at once if the petition to set aside the *ex parte* decree should prove unsuccessful, the surety's liability will not be affected by the granting of time by the Court to the judgment debtor and therefore 64 M ...
inapplicable to such a ...
MOIDU *v.* ABDUL KHADE...

48 L W. ...

——*Co-sureties — Right* ...
paying in excess of his share— ...

is entitled to claim is that he should share proportionately in the proceeds of the security when it is realized.

TELEGRAPH ACT (1885), S. 27.

(*Panckridge, J.*) KAMAL CH. CHUNDER *v.* SUSHILABALA DASSEE. 42 C.W.N. 1258=A.I.R. 1938 Cal. 405.

——Discharge of — Creditor excluding debt guaranteed by surety from settlement by the Debt Conciliation Board. *See* CONTRACT. ACT SS. 134 AND 139. A.I.R. 1938 Nag. 413.

——Discharge of —Surety for judgment-debtor—Time granted to judgment-debtor by Court—If exonerates surety from liability. *See* C. P. CODE, S. 55 (4) 1937 M.W.N. 1165.

——Liability—Letter of guarantee—Construction— ... s have been ... -btor"—Lia- ... demanding ... against surety. ... W.R. 1194.

... —*Right of* ...

... ot claim an ... his bond for ... ss to grant ... may make such orders as the facts and circumstances of each case may call for after holding an enquiry into the allegations of maladministration. (*Costello and Biswas, JJ.*) PROHLAD CHANDRA FARICAL *v.* PABAN CHANDRA FARICAL. 42 C.W.N. 1058=68 C.L.J. 433==A.I.R. 1938 Cal. 757.

——*Security-bond—Form —Enforcement—Procedure —Right of suit—C. P. Code, S.* 145.

A security bond may be, and usually is, given to the Court. Such bonds, though given to the Court, being really for the benefit of the creditor, may be enforced at his instance by the ordinary process of the Court. S. 145 of the C P. Code, contains express provision for enforcement of such bonds by way of execution of the decree or order against the surety. The remedy under S. 145 is not exclusive, and does not preclude a regular suit on the security-bond to enforce the security. But where the bond is to the Court, it appears to be doubtful if the Court could sue upon it, or could even assign it for somebody else to sue upon it. (*Henderson and Biswas, JJ.*) MALDA DT. BOARD *v.* CHANDRA KETU NARAYAN SINGH. I.L.R. (1937) 2 Cal. 698=66 C L J. 373.

behalf of the telephone owner without recovering the charge for the message beforehand, the head operator

TEMP. POSTPONMENT OF EXN. OF DECREES ACT (1937), S. 5.

cannot be said to have committed an offence under S. 27

tion Act, but the claim was within time allowed by law when the Temporary Postponement of Execution of Decrees Act came into force, such a suit is within time by reason of S. 5 of the said Act, the language of which is perfectly clear and does not admit of two interpretations (*Collister and Bajpai, JJ*) BADRI PRASAD *v.* RAM NARAIN SINGH. 1938 A W R. (H.C.) 771= 1938 R D 893=1938 A.L.J. 1074.

TORT—*Conversion—Measure of damages.*

In the case of a wrongful conversion of goods entrusted to a Railway Company, for transmission, the amount

to be made—C. P. Code, O. 20—Scope of

sion in O. 20, C. P. Code, for the passing of a preliminary decree in a suit for damages in respect of personal injuries or in respect of breach of contract If the princi-

reproduction of plaintiff's work of art—Intention of defendant—Relevancy.

42 C.W.N. 1045.

——*Defamation—Libel—Implied defamation—Right of action.*

On general principles a plaintiff would be entitled to succeed in an action for libel on the ground that there was implied defamation. (*McNair, J.*) KRISH-

TORT.

NAPPA *v* SWAMI AKHANDA NANDA. 42 C.W.N. 1045.

the plaintiff, another relation, the communication is naturally privileged, as it is normally given in confidence, even if it is not expressly stated so in the letter itself. (*Fazl Ali, J.*) SURYANARAYAN *v.* SITARAMAYAH 174 I.C 642=4 B.R. 468= 10 R.P. 544=A.I.R. 1938 Pat. 164.

——*Defamation — Privilege—Report submitted by officer of Railway Company about conduct of subordinate servant in response to requisition by higher officer—If privileged—Report false in one particular—Presump-*

efamatory matter contained malice. When there is a endant in an action for not required to substantiate , unless the plaintiff proves h proof no damages can be awarded. (*Courtney-Terrell, C. J. and James, J.*) KHIROD RANJAN DAS *v.* MOHAMMAD WASY. 19 Pat L.T. 186

A.I.R. 1938 Cal. 667.

——*Defamation—Right of action—Defamation of*

meant, it is not necessary that all the world should understand the libel; it is sufficient if those who know him can make out that he is the person meant. (*Davis, J C.*) AHMEDALI *v.* EMPEROR. 175 I C. 9=10 R.S. 274=39 Cr L J. 518= A.I.R. 1938

TORT.

liable in damages. *See* MASTER AND SERVANT—WRONGFUL DISMISSAL. 19 Pat.L.T. 186.

——*Vicarious liability—Liability of master—Independent competent contractor—Negligence of—Liability*

genuity and care. Where therefore the defendants engage competent persons for doing the work and leave the matter in their hands but the work is performed negligently and as a result part of the tree falls on the plaintiff's house causing
cannot be held responsible
persons whom they have e
MT. SULTAN BI *v.* NAND
11 B.N.

——*Vicarious liability-*
vants at ports of call—Lia

A ship owner must be

11 B C. 161 = 66 C.L.J. 441 = 42 C.W.N. 179 = A.I.R. 1938 Cal. 104.

——*Vicarious liability—Negligence of fellow servant—Liability of master—Doctrine of common employment*
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consequences of the negligence of another servant in the common employment, is well established as a part of the law of United Kingdom and may very well be adopted in this country as one based on principle of justice, equity and good conscience. In order to make that doctrine applicable, the person who is sought to be made liable for injuries caused by the negligence of his servant must show that the injured man and the man doing the injury were engaged in common undertaking. The rule of common employment cannot apply to a case where the negligence complained of relates to a period of time when the injured man was permitted to be off duty having been put practically on sick leave, as he and the servant guilty of negligence cannot be said to have been in any common employment at that time. Where the duty of the master of a ship was to see that everything in the ship was going on satisfactorily, and the duty of

Held, that the different classes of servants, the *laskars*, on the one hand, and the chief steward and master on the other were engaged in different departments of duty so absolutely unconnected with each other as to make them not engaged in a common employment, and that consequently the owner of the ship cannot on the ground of common employment plead non-liability to an injury committed upon the *laskar* by the carelessness or negligence of the chief Steward and Master of the ship. (*Guha and Mitter, JJ.*) T. & J. BROCKLEBANK, LTD. *v.* NOOR AHMODE. 42 C.W.N. 179 = I.L.R. (1938) 1 Cal. 216 = 176 I.C. 719 = 66 C.L.J. 441 = 11 R.C. 161 = A.I.R. 1938 Cal. 101.

TRADE MARK.

——*Vicarious liability—Negligence of Master of Ship and its chief steward—Liability of ship-owner.*

Where the master of the ship whose duty was to see that everything in the ship was going on satisfactorily and the chief steward whose duty was to look after the

66 C.L.J. 441 = I.L.R. (1938) 1 Cal. 216 = 176 I.C. 719 = 11 R C. 161 = 42 C W.N. 179 = A.I.R. 1938 Cal. 104.

——*Wrongful attachment—Damages—Costs of legal*
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158 =
A.I.R. 1938 Lah. 334.

——*Wrongful attachment—Suit for damages—Proof of malice and absence of reasonable and probable cause, if necessary—Damages for loss arising independent of the wrongful attachment, if can be recovered.*

In order to entitle one to damages for a wrongful attachment of property, it is not necessary to prove malice and the absence of reasonable and probable cause. The plaintiff cannot in such suit be entitled to damages on account of any loss which arose not out of the original act of wrongful attachment, but out of something entirely independent. (*Allsop, J.*) QAIM HUSAIN *v.* PIRBHU LAL. 1938 A.L.J. 654 = 177 I.C. 668 = 1938 A.L.R. 773 = 11 R A. 209 = 1938 A.W.R. (H C) 447 = A.I.R. 1938 All. 508.

TRADE MARK—*Infringement—Colourable imitation—Facts to be considered.*

It is a question of fact in every case whether the defendant's mark is or is not a colourable imitation of the plaintiff's mark. The surrounding circumstances of each case will have to be considered. It is not only necessary to look at the difference or at the resemblance between two given marks, but it is necessary to compare the two marks as a whole and then come to a decision. (*Mehta, J.*) HIRANAND *v.* SARDAR MEHARSINGH. 173 I.C. 930 = 10 R S 234 = A.I.R. 1938 Sind 38.

——*Infringement of—Cotton spools—Interlocutory injunction—Grant of.*

Where in a suit based on an alleged infringement of a trade mark on cotton spools, the plaintiffs pray for an interlocutory injunction restraining the defendants from selling cotton spools which are similar in appearance to those sold by the plaintiffs, but there is no evidence of any actual cases in which the defendants' cotton has been sold to persons desiring to purchase the plaintiffs' cotton or of cases where illiterate customers have been misled by the defendants' design into thinking that they were buying plaintiffs' cotton, no interlocutory injunction should be granted simply because the two spools have various features in common. (*Panckridge, J.*) KERR & CO. *v.* AHMEDABAD COTTON MANUFACTURING CO. 177 I C 473 = 11 R C. 249 = A.I.R. 1938 Cal. 458.

——*Infringement—Intention to deceive—Inference—Close similarity.*

TRADE MARK.

Fraud is to be presumed w
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no case of actual deceptic

imitation—Deception—Test.

The question for decision as to whether an alleged colourable imitation has or has not deceived anybody is to be decided with reference to the
In passing off cases, the probability
experts or persons who know the real
or unwary customers, is the misch
against. Non-deception of middleme

goods. There may be damage and yet there may be no passing off. Thus a suit connot be entertained if it is brought by a person not entitled to an action to restrain a defendant from passing off goods as the goods of a third party. He can bring the action only when the representation is that the goods are his goods. (*C. Mehta, J.*) HIRANAND *v.* SARDAR MEHARSINGH.

173 I C. 930 = 10 R.S. 234 = A.I.R. 1938 Sind 38.

——Meaning of. *See* PENAL CODE, S. 478

66 C L J. 210.

——*Passing-off—Action for—Colourable imitation—Test—Right to relief.*

The plaintiffs who were manufactu
had on their goods a device or a tr
own. The trade mark consisted of
firm in English at the top followed
containing the picture of a motor bus
sengers enjoying a ride therein and a tram car in the back ground. Underneath the pictorial label it was given in Devanagri script that the goods were manufactured in India. Below that appeared the numerals "4424" and underneath these numerals were the letter- "H R". The last line of the device gave the length of the piece as 24 yards and towar
seal of the firm. The defenda
facturing black mulls with a
that of the plaintiffs; that devic
name of the firm in English followed by a pictorial label

the letters of the figures showing the measurements of piece were exactly the same. There was also a seal in the corner. The plaintiffs alleged that the device adopted by the defendants was a colourable imitation of their device and prayed for an issue of pern
against the defendants restraining t
their device, get up and labels and fro
attempting to pass off their goods as
tiffs. It was established that the nume
the letters "H R" were common to th
also found that the plaintiffs' goods we
'Motor Chapp'. It was further proved that the plaintiffs' goods were known as "Lal Pagriwala" and that the dealers and customers who were particular in purchasing the goods of one of these firms generally expressed their

TRADE MARK.

essions. The charac-
e two firms was the

ible imitation and no
goods of the plain-
efendants entitling the plaintiffs
or. The distinctive mark of the
copied by the defendants and
there was no possibility of illiterate persons confusing the distinctive marks. That having regard to the fact that the plaintiffs came into the market only a few

of their device
raders, no relief
relating to law
Mohammad, J.)

A.I.R. 1938 Lah. 803.

for—Proof required.

of trade mark, the Court must exercise its own judgment from the impression which it obtains from looking at the two products in question. In a passing off action, proof of actual deception is not necessary. It is quite sufficient if the plaintiff can prove the probability of deception. (*Braund, J.*) NATIONAL CARBON CO. *v.* SEI SIN & CO.

176 I.C. 597 = 11 R R. 57 = A I R. 1938 Rang 99.

——*Passing off—Expiry of patent—Rival manufacturer manufacturing goods similar in appearance as patented goods and adopting to them descriptive name by which patented goods had been known—Manufacturer—*

descriptive of patented
facturer could be held
nufactured the goods in
patents, and the only
ds lay in the appearance
of the goods so manufactured and the application to them of the name by which the patented goods had been known. It is conceivable that in the case of a patent, long ago expired, the evidence might possibly establish that the name had become distinctive of a particular manufacturer rather than descriptive of the goods, with

case of a descriptive word, it must be additionally
name of goods
(*Lord Rus-*
ED WHEAT
LTD.

R P C. 281 =

A I.R. 1938 P.C. 143 (P C).

——*Passing off—Action for—Passing off of books—Cause of action.*

Before a case of passing off of a book on the similarity

42 C.W.N. 511 = A.I.R. 1938 Cal 594.

——*Registration—Words merely descriptive of patented product—If can be registered—Descriptive words—If can acquire secondary meaning.*

TORT.

liable in damages. *See* MASTER AND SERVANT—WRONGFUL DISMISSAL. 19 Pat L.T. 186.

——*Vicarious liability—Liability of master—Independent competent contractor—Negligence of—Liability of* ...

... gerous if properly ... unskilled persons ... e of a little ingenuity and care. Where therefore the defendants engage competent persons for doing the work and leave the matter in their hands but the work is performed negligently and as a ... plaintiff's house cau... cannot be held resp... persons whom they ... MT. SULTAN BI *v.* ... 111 ...

——*Vicarious liability—Negligence of doctor—Servants at ports of call—Liability of ship-owner.*

A ship owner must be presumed, in the ... proof to the contrary, to have appointed ... competent care and skill as doctors at ports o... he is not liable for injury, if any, caused to a deck crew by the negligence of any of such doctors. (*Guha and Mitter, JJ.*) T. & J. BROCKLEBANK, LTD. *v.* NOOR AHMODE. I L R (1938) 1 Cal 216=176 I.C. 719=11 R C. 161=66 C.L J. 441=42 C.W.N. 179=A.I.R. 1938 Cal. 104.

——*Vicarious liability—Negligence of fellow ... —Liability of master—Doctrine of common em*...

... consequences of the negligence of another servar... common employment, is well established as a pa... law of United Kingdom and may very well be ... in this country as one based on principle of justice, equity and good conscience. In order to make that doctrine applicable, the person who is sought to be made liable for injuries caused by the negligence of his servant must show that the injured man and the man doing the injury were engaged in common undertaking. The rule of common employment cannot apply to a case where the negligence complained of relates to a period of time when the injured man was permitted to be off duty ... the ... been ... the ...

Held, that ... *laskars*, on the ...

... C.L. ...

TRADE MARK.

——*Vicarious liability—Negligence of Master of Ship and its chief steward—Liability of ship-owner.*

Where the master of the ship whose duty was to see that everything in the ship was going on satisfactorily and the chief steward whose duty was to look after the ... incapacitated from doing work for the rest of his life, the owner of the ship is liable. (*Guha and Mitter, JJ.*) T. & J. BROCKLEBANK, LTD. *v.* NOOR AHMODE. 66 C L.J. 441=I.L.R. (1938) 1 Cal. 216=176 I.C. 719=11 R C. 161=42 C W.N. 179=A.I.R. 1938 Cal. 104.

... *legal* ... *can be* ... nt, the ... h the ... Nor can damages be recovered for personal worry. Every ... ings to establish ... , but this is not ... (*Monroe, J.*) ...0 P.L.R 158=A.I.R. 1938 Lah. 334.

——*Wrongful attachment—Suit for damages—Proof of malice and absence of reasonable and probable cause, if necessary—Damages for loss arising independent of the wrongful attachment, if can be recovered.*

In order to entitle one to damages for a wrongful ...

TRADE MARK—*Infringement—Colourable imitation—Facts to be considered.*

It is a question of fact in every case whether the defendant's mark is or is not a colourable imitation of the plaintiff's mark. The surrounding circumstances of each case will have to be considered. It is not only necessary to look at the difference or at the resemblance between two given marks, but it is necessary to compare the two marks as a whole and then come to a decision. (*Mehta, J.*) HIRANAND *v.* SARDAR MEHARSINGH. 173 I.C. 930=10 R S 234=A.I.R. 1938 Sind 38.

TRADE MARK.

Fraud is to be presumed where the similarity is close and remains unexplained. An intention to deceive may be inferred from the circumstances of the case, though

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A.I.R. 1938 Sind 38.

——*Infringement—Right to sue in respect of—Facts entitling*

…

173 I.C. 930 = 10 R.S. 234 = A.I.R. 1938 Sind 38.

——Meaning of. *See* PENAL CODE, S. 478.

66 C.L.J. 210.

——*Passing-off—Action for—Colourable imitation—Test—Right to relief.*

The plaintiffs who were manufacturers of black mull

…

"H R". The last line of the device gave the length of the piece as 24 yards and towards the right there was a seal of the firm. The defendants also started manufacturing black mulls with a device closely resembling that of the plaintiffs; that device also consisted of the name of the firm in English followed by a pictorial label

…

as those on the plaintiffs' device and the numerals and the letters of the figures showing the measurements of piece were exactly the same. There was also a seal in the corner.

…

'Motor Chapp'. It was further proved that the plaintiffs' goods were known as "Lal Pagriwala" and that the dealers and customers who were particular in purchasing the goods of one of these firms generally expressed their

TRADE MARK.

desire by resorting to those expressions. The characteristic feature of the goods of the two firms was the pictorial label.

Held that there was no colourable imitation and no

…ds of the plain-
…g the plaintiffs
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plaintiffs them-
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…raders, no relief could be granted to them. (Principles relating to law of Trade-marks enunciated.) (*Din Mohammad, J.*)

VERA MALL.

A.I.R. 1938 Lah. 803.

——*Action for—Proof required.*

…fringement of trade mark, the Court …own judgment from the impression …from looking at the two products in …ssing off action, proof of actual decep…sary. It is quite sufficient if the plain… probability of deception. (*Braund,*

CARBON CO. *v.* SEI SIN & CO.

…I.C. …= 11 R.R. 57 = A.I.R. 1938 Rang 99.

——*Passing off—Expiry of patent—Rival manufacturer manufacturing goods similar in appearance as patented goods and adopting to them descriptive name by which patented goods had been known—Manufacturer—If guilty.*

It is difficult where a name is descriptive of patented … a manufacturer could be held … he manufactured the goods in … expired patents, and the only … rival goods lay in the appearance

…

manufacturer rather than descriptive of the goods, with the result that other manufacturers of the goods could be compelled to adopt some means of effectively distinguishing their goods from those of the particular manufacturer. But difficult as such a case is to prove in the case of a descriptive word, it must be additionally

…e of goods
…Lord Rus-
WHEAT

175 I.C. 178 = 10 R.P.C. 281 = A.I.R. 1938 P.C. 143 (P.C.).

——*Passing off—Action for—Passing off of books—*

…k on the similarity …ust be shown that …with a particular …in as to get up, it …style of printing or … the work is that

…NARAIN TRIVEDI

178 I.C. 106 = 42 C.W.N. 541 = A.I.R. 1938 Cal 594.

——*Registration—Words merely descriptive of patented product—If can be registered—Descriptive words—If can acquire secondary meaning.*

TRADE MARK.

Where a name is merely descriptive of the patented product or of the character and quality of the goods in connexion with which it is used, the name, after the patent has expired, cannot be registered as a trade mark because it would be attempting by registering the name of the patented product to prolong the patent monopoly. It is however clear that such a descriptive word may possibly have acquired a secondary meaning, and have come to mean or indicate that the goods in connexion

being descriptive of the goods in connexion with which it is used, it is in fact the name of the product of which those goods are composed, then a state o which makes it extremely difficult that tl ever become indicative of origin so capable of registration as a trade mark. may sometimes be overcome in a case where the alleged trade mark is in fact a description of the goods, but is

they could acquire a secondary meaning. In order to ascertain whether words have acquired secondary meaning it is of primary importance to see how the manufacturer used the words, *i.e.*, to see whether he used them as a trade name or common law trade mark for the purpose of indicating the origin of the goods, or whether were used by him merely descriptively. (*Lord Ru of Killowen.*) CANADIAN SHREDDED WHEAT LTD *v.* KELLOGG CO. OF CANADA, LTD.

175 I.C. 178=10 R.P.C. 2[illegible]

goods to pass as those of others, he cannot be heard to

in its inception and is still calculated to deceive, the user

the opinion and claim of the declarant As there is no statute for registering trade marks in India 'a right to a trade mark is acquired by user'. (*Biswas, J.*) LOKE

T. P. ACT (1882), S. 3.

NATH *v.* ASWINI KUMAR DEY.

I.L.R. (1938) 1 Cal. 665=175 I.C. 144=10 R.C. 754=39 Cr.L.J. 537=42 C.W.N. 1121=66 C.L.J. 210=A.I.R. 1938 Cal 216.

TRANSFER OF PROPERTY ACT (IV OF 1882)

—Applicability of S. 62 of the Contract Act. *See* CONTRACT ACT, S. 62. A.I.R. 1938 All. 418 (F.B.).

——*Commission Agent's right—If can be assigned.*

A mere right to sue

A.I.R. 1938 Cal. 377.

im—Right of vendor to for payment of vendor's (*e*) AND 3.

)=A.I.R. 1938 All. 544.

——S. 3—*Attestation by Sub-Registrar — Proof required.*

d attestation by the Sub-Regis- by evidence that the Sub Regis- on the document in the presence C. *Mitter, J.*) ATUL CHANDRA CHARAN DEY SARKAR.

67 C.L.J. 31.

——S. 3—*Attestation—Knowledge of contents—Presumption.*

An attesting witness cannot be presumed, from the mere fact of attestation, to be aware of the contents of the document, much less of a mere recital of boundaries. A.I.R. 1933 Lah. 551, Rel. on. (*Bhide, J.*) CHUNI

——Ss. 3 and 130(1)—'*Debt' contemplated by—'Ex- in future—Rela- Ss. 3 and 130 (1).*

future on the part onship, contractual t, cannot, on any as a "debt", still g" debt. Neither and it cannot be contingent." A contingency is something that may happen in future which affects a present relationship. nterest such as a contingent existing interest which may interest in possession. The It is even saleable as such. ting" debt, it intends thereby es not yet exist at all. So also S. 130 (1) in its terms points to an immediate interest of some sort passing. While it is in every way appropriate to an accruing, conditional or contingent

debt, it cannot be reconciled with a debt which does not exist at all. (*Braund, J.*)
matter of. 17

——S. 6—Scope—If contr
to reconcile Ss. 6 and 43 *See*
40 Bom.L.R. 147.

——S. 6—Spes successionis—*Release by Hindu reversioner of his interest in favour of widow—If binding on him after death of widow.*

Where on the death of a Hindu leaving a widow and a daughter, the widow succeeded as heir and the

ing on the daughter after the death of the widow. (*Broomfield and Macklin, JJ.*) KARUSINGA *v.* NARSINHA 174 I.C. 116=10 R.B. 426=39 Bom.L.R. 1287=A.I.R. 1938 Bom. 121.

S. 6 (*a*) of the T. P. Act has no application to such an arrangement. (*Zia-ul-Hasan and Yorke, JJ.*) CHHATARPAL SINGH *v.* SANT BAKHSH SINGH.
176 I.C. 958=11 R.O. 11=1938 O.A. 573=1938 O.W.N. 711=A.I.R. 1938 Oudh 190.

——S. 6 (a)—*Expectancy—Future income to be*

1938 M.W.N. 806=48 L.W. 258=A.I.R. 1938 Mad. 881.

——S. 6 (a)—*Interpretation of—Municipal employees chance of receiving a gratuity—If can be transferred—Transfer if can be challenged on the insolvency of the transferor—Gratuity and tradesman's book debts—Difference.*

granting of a gratuity to a Municipal employee is entirely in the discretion of the

that the book debts are a necessary incident of every business conducted on a credit basis. A mortgage of such debts operates as an equitable assignment, fastening on the property when it comes into existence. (*Roberts, C.J. and Spargo, J.*) SOLOMON *v.* THE OFFICIAL ASSIGNEE. 1938 Rang.L.R. 542.

——S. 6 (a)—*Relinquishment of interest in property*

His son is, therefore, not estopped from claiming the

——S. 6 (d)—*Applicability—Mortgage of right to receive maintenance under trust deed—Validity.*

Where an owner in full right of certain property grants it to a trustee upon trust among other things, to pay him an allowance per month for his maintenance,

1938 O.L
10 R.P.C. 235=4 B.R. 415=67 C.L.J. 241=33 S.L.R. 448=40 Bom.L.R. 767=1938 A.L.J. 292=A.I.R. 1938 P.C. 123=(1938) 1 M.L.J. 597 (P.C.).

has been given to a Hindu widow in lieu of maintenance, the transfer of the property during her life is not a transfer of her rights to maintenance and is valid. Ss. 6 (*d*) and (*dd*) have no application to such a case. A.I.R. 1932 All. 662. Foll. (*Panckridge, J.*) KAMAL CH. CHUNDER *v.* SUSHILABALA DASSEE.
42 C.W.N. 1258=A.I.R. 1938 Cal. 405.

sue—Bond
Wards Act
ardian and
major—Vali-
ntainability.

1938 M.W.N. 379.

Where a vendee
of the conside-
relation between the vendor and vendee is that of a debtor and creditor and the money left in the hands of the vendee is a debt which could be transferred. The right to recover this is an actionable claim as defined in S. 3, T. P. Act (*Ismail, J.*) AGRENATH MISIR *v.* RAM RAT PANDEY. 177 I.C. 700=1938 A.L.R.

of the Act, which would apply to Hindus (after the amendment of the Act in 1929), would give rise to the presumption that the deed confers on the donee the whole of the estate which the donor is capable of transferring. Even in the case of a deed of gift executed before 1929, *i.e.*, before the amendment of the Act, there being no "rule of Hindu Law" requiring a transfer in favour of a woman to be treated as a limited transfer, or qualified transfer, the transfer by way of gift must be treated as conferring upon the donee the whole of the interest which the transferor is capable of passing at the date of the deed and hence the donee would take an absolute estate and not merely a qualified or limited estate. (*Wassoodew and Thakor, JJ.*) HILALSING *v.* UDESING. 173 I.C. 963 = 10 R.B. 406 = 39 Bom L.R. 1217 = A.I.R. 1938 Bom. 125.

pre-settlement debts and certain other loans. An heir of

footing that the later mortgages were valid, as by express agreement, the original hypothecation bonds and the invalid mortgages were to be cumulative and independent securities. Still less can it arise after the mortgages had been set aside. (*Sir George Rankin.*)

...es from

by the
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perties which were gifted by him previously to the widow. The defendants 2 and 3 purchased the properties after making due inquiries by examining the record-of-rights, and they had no reason to suspect that anybody but defendant No. 1 was the real owner and they acted in good faith. The plaintiff who got the will soon after the death of the widow did nothing at or after the revenue inquiry which was conducted after the issue of general notices; he also sat silent after the sale deeds were executed by the 1st defendant and gave no notice to either of the defendants 2 and 3 or even to the 1st defendant. It was not shown or even alleged that the 1st defendant himself was aware of the will. Nearly four years after the death of the widow and two years after the sale-deeds plaintiff sued for possession of the lands devised to him by the widow under her will.

not therefore
the properties
were *bona fide*
...ly recover the
... 1st defendant.
...SING *v.* UDE-
... 10 R.B. 406 =
39 Bom.L.R. 1217 = A.I.R. 1938 Bom. 125.

knowledge of his title to the property at the time of giving his consent. (*Coldstream and Din Mohammad, JJ.*) SHORI LAL *v.* DAMODAR DAS 175 I.C. 832 = 11 R.L. 77 = 40 P.L.R. 286 = 18 Lah. 783 = A.I.R. 1938 Lah. 86.

A.I.R. 1938 All. 64.

——S. 43—*Applicability—Court-sale.*

The equitable principle governing S. 43 of the T. P. Act does not apply to a Court-sale. (*Dalip Singh, J.*)

also share of another co sharer to be pre-empted by mortgagor—Subsequent pre-emption of such share—Rights of mortgagee—Such share—If mortgaged—Creation of charge.

S. 43 of the T. P. Act cannot apply to a case where the transferee is aware of all the circumstances and the state of the transferor's title, where it could not be said that the transferor fraudulently or erroneously represented to the transferee that the belonged to him and that he was a it The mortgagor in a hypothecat him included not only his own mahal in a village, but also the share of another co sharer who has executed a sale deed in favour of a stranger which gave rise to a righ exercisable by the mortgagor The

created a charge on that share, and that share therefore became a security for the money borrowed by the mortgagor under the hypothecation deed. *and Allsop, JJ.)* KABUL CHAND *v.* BA

I L.R. (1938) All 63=173 I C 130=1
1938 A L.R. 87=1937 A.
1937 A.L.J. 1240=A I.R.

——S. 43—*Applicability—Transfer of estate as full owner by person having only spes successionis—Subsequent acquisition by transferor of full rights—Such rights—If pass—S. 6—Effect of.*

Where in the case of a sale an erroneous representation is made by the transferor that he is the full owner

feree knows that the *(Barlee and Macklin, J*

I.L.R. (1
10

A I.R. 1938 Bom. 228.

——S. 48—*Applicability — Substituted security—*

A.I.R. 1938 Mad. 547.

——S. 50—*Tenant paying rent to landlord after notice of sale by landlord—Payment relating to period when suit was pending for cancellation of sale deed—Tenant, if protected.*

The terms of S. 50 of the T. P. Act raise a question of good faith on the part of the payer twice, first with regard to the payment actually made and, secondly of the land by another person, when the payment relates to the period when a suit was pending between the vendor and the vendee for the cancellation of the sale-deed on the ground that it was a benami transaction. *(S. K. Ghose and Patterson, JJ.)* SATTU LALL JAHAR MULL *v.* KRITANTA KUMAR GUHA.

67 C L J. 527=42 C.W.N 378.

——S 51—Applicability—Landlord and tenant—

1938 P.W.N. 386.

——S 51—Applicability—Lease of temple land for

1938 M.W.N. 1236.

of transferee—Inference from

The question whether or not a transferee believed in good faith that he was absolutely entitled to the pro-

1938 O.W.N. 281.

——S. 51—*Principle underlying — Applicability—Circumstances.*

The principles underlying S. 51 of the T. P. Act have been extended in suitable cases on equitable grounds. Where, the defendants being relations of the plaintiff

1938 A W R (H C) 980=A I R 1938 All 342

for leave to
lands dis-

According to doctrine of *lis pendens*, any dealings with the property in suit by a party thereto cannot

Madras Marumakkathayam Act, S. 43 if fall under S. 52—Suit for partition filed after application for registration of tarwad as impartible—If affected—Subsequent registration of tarwad—Effect on suit. *See* MADRAS MARUMAKKATHAYAM ACT, S. 43.

1938 M.W.N 1243.

——S. 52—*Applicability—Leases for purposes of cultivation.*

T. P. ACT (1882), S. 52.

It is wrong to think that leases for purposes of cultivation during the pendency of partition proceedings are bad under S. 52 of the T. P. Act. (*Bomford, J.M.*) RAM GHULAM *v.* THE COLLECTOR OF BANDA. 1938 A.L.J. (Supp.) 20 = 1938 A.W.R. (B.R.) 144 = 1938 R.D. 285.

——S. 52—*Applicability—Maint* ... *favour of widow creating charge on* ... *ties—Transfer of properties by* ... *affected by* lis pendens—*Agreemen* ... *alienee to release property from ch* ... *part consideration therefor—Effec* ... *mance.*

Where a person such as a Hindu ... a decree for maintenance, the maintenance being made a charge on immovable properties, th ... decree is entitled to proceed against ... though the properties or some of ... into other hands from the persons ... they were at the time of t ... transfer of the properties with the charge subsisting thereon is affected by *lis pendens.* The fact that the widow holding the decree ... transferee to release the properties in ... the charge for consideration does ... doctrine of *lis pendens* from operating, until there is a release by her valid in law, the properties remain charged. The fact that part ... the release agreed on has been ... not entitle the transferee to a re ... part performance has no application to such a case, so as to override the rule of *lis pendens.* (*Leach, C. J., Varadachariar and Mockett, JJ.*) RAMACHANDRA NAIDU *v* VENGAMMA NAIDU.

10 R.M ...

——S. 52- ... —*If limited* ...

Obiter, the words "any other party thereto" in S. 52, Transfer of Property ... meaning only any oppos ... opposing interest.' The ... *and Manohar Lall,* ... NANDI CHOUDHURY ... 19 Pat.L.T. 35 = A.I.R. 1938 Pat. 467.

——S. 52—Lis pendens—*Applicability—Pendency of suit in a Court not having jurisdiction.*

The doctrine of *lis pendens* cannot apply where the suit concerned was pending in a Court which had no jurisdiction to entertain it at all. (*Broomfield and Macklin, JJ.*) KARUSINGA *v.* NARSINHA. 174 I.C. 116 = 10 R.B. 426 = 39 Bom.L.R. 1287 = A.I.R. 1938 Bom. 121.

...

execution of the decree in the mortgage su ... *Mohammad Noor and S. C. Chatterjee J* ... LAL MARWARI *v.* THAKUR PRASAD MAR ... 1938 P.W.N. 836 = 19 P.L.T. 781.

T. P. ACT (1882), S. 53

——S. 52—*Suit by A for declaration of title to property against C—Mortgage taken from C pending suit—If affected by* lis pendens.

A brought a suit against *B* to recover lease money of certain property. *B* pleaded that *A* had represented to him that *C* had half share in such property and that on ... money to *C* ... *B* there- ... denying his ... by his mort- ... gage from *C* ... roperty and ... *C* for decl- ... suit *B* was also made a party.

... *B* was aware of the fact that ... was in dispute he took the ... rtgage was therefore affected ... *ens* and *A* could not be held ... (*Bhide J.*) THAKUR DAS ... 40 P.L.R. 763 = A.I.R. 1938 Lah. 448.

——S. 53 ... —*Execution Sale* ... *session by trans-* ... *plaintiff for pos-* ... *ent and colourable and sham transaction—Maintainability.*

There is no rule of law that ... intiff who has pur- ... and who is sought ... olourable transfer ... sham transaction, is limited to the remedy of S. 53, T. P. Act. Where the plaintiff is opposed in taking delivery by the transferee from the judgment debtor on the ground that he is in possession and the plaintiff ... alleging ... llusive, ... bar to ... after ... by the ... was a colourable and sham transaction. (*Rowland and* ... RAM ASRAY ... P.W.N. 738.

——S. 53 ... *movable pro-* ... —*Transfer, if* ...

The principle contained in S. 53, T.P. Act, applies to transfers of movable property also. A transfer is wholly void if part of the consideration was non existent and the object of it was to defraud the creditors. (*Pollock, J.*) MOTILAL *v.* KASHIBAI. 174 I.C. 398 = 10 R.N. 384 = A.I.R. 1938 Nag. 249.

——S. 53—Frame of suit—Objection as to—If can be raised in appeal. *See* PRACTICE—APPEAL—NEW PLEA. 1937 O.W.N. 1069.

——S. 53—*Fraudulent intention—Inference from* ...

... as well as the ... are all rele- ... cide what his ... Where at the ... er sons the ... reditors and ... great loss to ... creditors who ...

A.I.R. 1938 Lah. 136

——S. 53—*Fraudulent transfer—Inference circumstances.*

It is not correct perhaps to say that there is distinction between consideration which should be

as annual rent which was not to
but to his creditors in discharge o
by the lessor. These creditors h
decree, in other words, there was
sure being put upon the judgment
creditors. Besides this there was
that the judgment-debtor had give
lessee and moreover there was no proof whether the annual rent which was to be paid to the creditors had actually been so paid

Held, that in these circumstances the transfer was with intent to defeat and delay the creditors and it was not a case of preferring or favouring one creditor at the expense of another. The transfer was therefore void as against

(*Dalip*
SHAH.

that debts are due from transferor—If sufficient.

The mere fact that debts are due from transferor is not alone sufficient to establish a fraudulent intention; on the other hand it must be proved that at the time of the transfer, motive for the transaction was to defeat or delay the creditors There can ho
no direct evidence of the existe
intention This can be inferred
proved in the case. (*Jai Lal, J*)
KISHAN CHAND ISHAR DAS. A.I.R. 1938 Lah. 136.

——S. 53—*Fraudulent transfer by insolvent in favour of his wife more than two years before judication—B purchasing property in execu mortgage decree against her—Application by Receiver to avoid transfer—Transfer in favour could be set aside*

A Mahomedan transferred certain properties

made by the Receiver, the transfer in his favour must stand. (*Bhide, J.*) BASHARAT ALI SHAH *v* RAM RATTAN (OFFICIAL RECEIVER).

does not make the transfer a fraudulent one. A debtor for all that is contained in S. 53, T. P. Act, may pay his debts in any order he pleases, and prefer any credi-

benefit to
Oudh Laws
to whom a
vastava, C.
B JAHAN
I O 887=
N. 1176=
Oudh 44.
tors—Test of inten-

177 I.O. 611=11 R O 60=
1938 O.W N. 922=1938 O A 719=
1938 O L R. 433=A I R. 1938 Oudh 230.

——S. 53—*Intent to defeat—Motive—Relevancy.*

In looking at a transaction for purposes of S. 53 of the T. P Act, one must look to the intention of the transfer and not to the motive. Where the motive of
eguard the maintenance
ion was clearly to put the
creditors, the transfer is
lay creditors. (*Panckridge, J.*) CHANDMULL *v.* SATYA CHURN. 42 C.W.N. 34.

——S. 53—*Issue under—If can be raised by way of defence.*

Where at the time of a sale of the judgment debtor's property in execution of a decree an objection to the sale

claim on the ground that the property was transferred fraudulently and he need not file a separate suit to have

S. A I.R. 1938 Lah. 136.

save it from creditors—If fraudulent.

Where a person who was borrowing money and squandering it by his extravagance and immoral habits was
eed of relinquishment of
in favour of his minor
property from the credi-
ot be said to have been
frauding any creditors.
.) SUNDAR LAL *v.* GUR-
SARAN LAL. 10 R.O. 187=172 I.C. 637=
1938 O.A. 34=1938 O L.R. 14=
1938 O.W N. 104=A.I.R. 1938 Oudh

——S. 5:
debtor as
Receiver, if

In a suit
debtor as be
passed fron
where the de
vent, is a necessary party and such a suit or appeal is incompetent when the receiver, who is a necessary party is not impleaded. (*Bhide, J.*) DIN MOHAMMAD *v.* MT. WALAIT BEGUM. A.I.R. 1938 Lah. 856.

——S. 53—Suit under—If can be stayed under S. 7 of U. P. Encumbered Estates Act. *See* U. P. ENCUMBERED ESTATES ACT, S. 7. 1938 O.A. 548.

——S. 53—*Transfer—Mere preference of particular creditor.*

Mere preference of one creditor to another is not a transfer within the meaning of S. 53. There is a distinction between transfers in bankruptcy which are bad, because they do in fact prefer one creditor to another, and between transfers which fall under the provisions of S. 53, which are bad because they are sham transactions intended to benefit the debtor and defeat or delay the creditors generally. (*Davis, J.C. and Mehta, J.*) PARMANAND JHANGALDAS *v.* JAIRAMDAS SADHURAM. 178 I.C. 469 = A.I.R. 1938 Sind 215.

——S 53—'*Transfer*'—*Relinquishment of rights by co-partener.*

The relinquishement of his rights by a coparcener in

——S. 53 — *Transfer preferring one creditor to another—Validity.*

the mortgagee to be paid to the debtor's prior mortgagee. The debtor did not retain any benefit to himself.

Held, that the transfer was in principle only a transfer which paid off previous creditor to the disadvantage of another creditor and therefore was not affected by S. 53, Transfer of Property Act.

Held further, that the circumstance that the debtor's action was prompted by revenge against the creditor who got him imprisoned was irrelevant. (*Dalip Singh and Skemp, JJ.*) MILA *v.* MANGAL RAM. A.I.R. 1938 Lah. 156.

——S. 53—*Transfer—What may amount to—Acquiescence in mutation.*

Where two debtors allowed the wife of one of them to

mutation by stating that they had no objection.

Held, that such an act came within the description of an act by which a living person conveys property and thus being a transfer was voidable under S. 53. (*Thomas, C.J. and Yorke, J.*) ASKARI BEGAM *v.* BALLABH DAS. 175 I.C. 708 =

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dh 165.
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xecuted
e deed
must be considered as a whole. The deed is valid if it is substantially for the benefit of the creditors and not simply a device for retaining a benefit for the author of the trust at their expense. A trust, the main object of which is the payment of the debts of the author of the trust, is substantially for the benefit of the creditors, and it is not hit by S. 53 of the T. P. Act, although there is a provision for the maintenance of the family of the author of the trust which is not inconsistent with the tenor and object of the trust. (*Nasim Ali and Henderson, JJ.*) HIMANSU KUMAR *v.* HASEM ALI KHAN. 42 C.W.N. 1131 = A.I.R. 1938 Cal. 818.

——S. 53 (1)—Frame of suit—Suit under O. 21, R. 63, C. P. Code—If to be of a representative character. *See* C. P. CODE, O. 21, R. 63 AND T. P. ACT, S. 53. 1937 O.W.N. 1169.

——S 53 (1), Para. 2—*Applicability—Conditions.*

S. 53 does not apply to cases simply where one creditor is preferred to another, and the provisions of Para. 2 of sub-s. (1) of S. 53 do not come into operation until the provisions of Para. 1 of that sub-section have been fulfilled. (*Davis, J.C. and Mehta, J.*) PARMANAND JHANGALDAS *v.* JAIRAMDAS SADHURAM. 178 I.C. 469 = A.I.R. 1938 Sind 215.

in 1929), S. 53 (1), last para— O. 21, R. 63, C. P. Code—Suit by er to establish right to attach and ution of decree—Form of—If to ... *See* C. P. CODE, O. 21, R. 63. 40 Bom L.R. 371.

to transfer

contract to
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of the B. T.
Act which in
by S. 53-A
against his
that section.
L CHANDRA
POLLEY *v.* KALIPADA GHOSAL. 42 C.W.N. 630.

——S. 53 A—*Applicability—Mortgage—Mortgagor reserving to himself right to settle sub soil rights—Subsequent unregistered lease by mortgagor—Lessee in possession—Action on mortgage by assignee of mortgagee—Claim by lessee to specific performance—Sustainability.*

In a mortgage deed the mortgagor reserved to himself the right to manage sub soil rights of the mortgaged property. Subsequently, the mortgagor by an unregistered document contracted to lease the sub soil rights to another person. The lessee was in possession of the soil under the unregistered document. In an action on the mortgage by the assignee of the mortgagee the lessee contended that the action could not affect his lease.

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(*Wort*
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DI NATH. 17 Pat 460 = 176 I.C. 273 = 19 Pat.L.T. 594 = 4 B.R. 697 = 11 B.P. 59 = A.I.R. 1938 Pat. 337.

——S. 53 A—*Applicability—Necessity for written agreement.*

T. P. ACT (1882), S 53-A.

A contract or an agreement in writing or a written agreement is a *sine qua non* under S. 53 A. Such written agreement may of course be the embodiment of what has already been orally agreed upon and may also refer to payment by the purchaser and receipt by the vendor of part of the purchase-money, but it must essentially be a written agreement. Unless a document can be held to be an agreement or contract of sale, it will not, by the mere fact that from it the terms necessary to constitute the transfer can be ascertained with reasonable certainty, be sufficient to satisfy the requirements of S. 53 A as what the section requires is not a

174 I.C. 169 = 10 R.R. 386 = A.I.R. 1938 Rang 49.

——S. 53-A—*Notice—Facts from which it could be*

arose over collections in the neighbouring lands resulting

after his lease, the question arose whether *C* had notice.

Held, that *C* had notice. S 53 A ope

——(as amended), S. 53-A—*Retrospective effect—Suit after 1st of April 1930 in respect of transaction prior to that date—If affected—Act XX of 1929, S. 63*

the defendant to avail

red by the section,

was much earlier in po

1929 prevents only

amended Act from b

the rest which includes S. 16 (which introduced S. 53 A)

T. P. ACT (1882), S. 54.

missible under the law previous to the introduction of S 53-A. As this compromise is itself not admissible the rent receipts in which the amount of the original rent is stated would also be not admissible to show reduction of rent. (*Jack, J.*) MOHENDRA NARAYAN ROY *v.* PROFULLA KUMAR. 43 C.W.N. 34 = A.I.R. 1938 Cal. 795.

——S 53 A—*Right of defence under—Limitation—Limitation Act, Art.* 114.

S. 53 A of the T. P. Act confers only a passive right and is available to a defendant to protect his possession. Art. 113 of the Limitation Act certainly can-

ntly the right of

to a defendant

performance of the

red by limitation.

GOKUL CHANDRA POLLEY *v.* KALIPADA GHOSE 42 C.W.N. 630.

——S 53-A—*Scope—Retrospective operation.*

S. 53-A, of the T. P. Act should be regarded as re-

Act, is not retrospective, (*Wort and Manohar Lall, JJ.*) JAGDAMBA PRASAD *v.* ANADI NATH.

17 Pat. 460 = 176 I C. 273 = 4 B R. 697 = 11 R P. 59 = 19 Pat L T. 594 = A.I R. 1938 Pat. 337.

——S. 53-A—*Scope of—Contract to be in writing and not writing referring to prior oral contract.*

tion into writing of a previous oral agreement, which would fall within the provisions of S. 53-A and a writing in which there is a mere reference to a previous oral agreement. (*Roberts C. J. and Dunkley, J.*) MAUNG OHN *v.* MAUNG PO

177 I C. 977 = A I.R. 1938 Rang. 356.

amended), S. 53 A—*Scope of—Extent of conferred.*

of the T. P. Act is restricted in its application

rights. (*Bose, J.*) HINDUSINGH *v.* KHETSINGH.

T. P. ACT (1882), S. 54.

—No permission—Registration on date when Collector ceased to function—If can validate.

In case of a sale, as in the case of gift, the date on which the transfer takes effect is the date of the instrument and not the date of the registration of the instrument. Where, therefore, a sale is effected of property which is under the Collector's management under Sch. 3, C. P. Code, without the written permission of the Collector, such a sale is a nullity and the fact that the property has ceased to be under the management of the Collector on the date on which
registered will not render the s.
cannot be turned into an effecti
gistration of an ineffective trans
Collector has ceased to functi
Puranik, J.) GANESHPRASAD
175 I.C. 384=10 R.N. 447=

———S. 54—*"Tangible immoveable property"—"Delivery of possession"—Property subject to usufructuary mortgage—Sale for less than Rs. 100—Sale deed not registered—Validity—Vendee directed to discharge mortgage and to enjoy property—Vendee paying off mortgage and getting possession—Sufficiency.*

A sale by a mortgagor of his interest in immoveable property of which he has made a usufructuary mortgage is a sale of "tangible immoveable property" and can be effected, where the value of the property is less than Rs. 100, by an unregistered sale deed and delivery of possession. Where it is provided in the contract of sale that the vendee is to pay off the mortgage and enjoy the property, if the vendee does in fact pay off the mortgage and gets possession, it must be held that he gets possession with the assent of the vendor, and that amounts to delivery of possession within the meaning of S. 54, Transfer Property Act. *(Broomfield and Macklin, JJ.)* TUKARAM *v.* ATMARAM. 40 Bom L R. 1192.

———S. 55 (1)(g) and Sub-S. (2)—*Applicability of principle underlying—Covenant for freedom from incumbrances—Who could avail and pursue remedy—Measure of damages.*

A mortgaged to R and subsequently to P by way of second mortgage. P assigned to G. Later on, R sued A without impleading P or G and obtained a foreclosure decree and then sold to X as a property
incumbrances. X mortgaged it to Y also a
bered estate. Subsequently G sued on his
and obtained a decree. The question was
the mortgagee of X was entitled to pursue
which X had against his vendor R on the covenant for freedom from incumbrances

Held, that the question was to be decided according to the principle of S. 55 of the T. P. Act because what

that he had power to transfer and that the property was free from incumbrances. The b
passed to Y, the mortgagee from

sued R's representative, the liability would be greater. If

T. P. ACT (1882), S 55.

the value of the subject-matter was less than the debt, the damage would be the value of the subject-matter. *(Stone, C. J. and Puranik, J.)* RINSA ANSA *v.* MOHANLAL MADANGOPAL.

A.I.R. 1938 Nag. 257.

———S 55 (1) (g)—*Vendee's right to indemnity—Vendee not properly defending mortgage suit and paying large sum to mortgagee.*

Where the vendors of certain immovable property undertake to indemnify their vendees, if they suffer any

vendors, where it is found the vendees were negligent in their defence of the mortgage suit and did not raise proper pleas available to them and that there was really no cloud on the title of their vendors and with a little diligence exercised on the part of the vendees the cloud that was sought to be cast on the title of the vendors could have been cleared and the vendees unnecessarily paid an exorbitant sum to the mortgagees, without even consulting the vendors. *(Addison and Din Mahomed, JJ.)* LOOKMANJI ADAMJI *v.* MANGAL SAIN.

A I R. 1938 Lah. 743.

———S. 55 (4) (b)—*Vendor's lien—Enforceability by representative of vendor—Sale of property with direction to vendee to discharge decree debt of vendor—Consideration reserved with vendee—Vendee failing to discharge—Execution sale of property by decree-holder—Purchaser in execution—Right of to sue for unpaid purchase money from vendee—Right to interest.*

Where under a sale-deed the bulk of the consideration is retained with the vendee for being paid to certain holders of decrees against the vendor at the request of the vendee, it cannot be said that the statutory charge in respect of the vendor's lien for unpaid purchase money is given up. The mere fact that the vendor asks the vendee sometime after the sale-deed not to pay the amount due to one of the creditors

the decrees, who is not paid by the vendee brings the property to sale in execution of the decree against the vendor, it is the charge for unpaid purchase-money which the vendor had in the property after the private
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(1938) 1 M.L J. 316.

(6)—*Holder of charge under—Rights of —Insolvency—Sale of assets including ght by Official Receiver—Purchaser of all assets paying sale price but not getting formal sale deed*

T. P. ACT (1882), S. 55.

—Rights of—Suit on mortgage impleading original mortgagor only—Non-joinder of Official Receiver—Effect—Sub-mortgagee—Right to sue original mortgagor—T. P. Act, S. 134—"Transferee."

A person who purchases the assets including a mortgage right, belonging to an insolvent at a sale by the Official Receiver, but who does not get a formal registered deed of sale in his favour from the Official Receiver is not entitled to maintain a suit on the mortgage as against the original mortgagor merely on the strength of his purchase and payment of the sale price. Though he would get a charge or lien in his favour under S. 55 (6) of the T. P. Act for the amount paid by him to the Official Receiver, the charge would attach to all the items purchased by him and as charge holder he would not be entitled to throw the whole burden on one of the items covered by the charge. Though he gets the rights of a sub mortgagee by reason of S. 55 (6), T. P. Act, and though as sub mortgagee he can sue the original mortgagor, if the Official Receiver who represents the original mortgagee is not impleaded as a party to the suit, that is a defect fatal to the suit, because the plaintiff cannot ask the Court to settle the amount due on foot of the sub-mortgage in the absence of the sub-mortgagor. Nor can the plaintiff holding a charge under S. 55 (6) be placed on the same footing as a

vendee is entitled to recover not only that part of the

C. J. and Dunkley, J.) U THA NYO *v.* M. M. R. M. CHETTYAR FIRM. A I.R. 1938 Rang. 367.

——Ss. 58 and 100—*Agreement to mortgage—If creates mortgage or charge—Rights of parties—Decree for specific performance—If relates back to date of agreement.*

that a decree for specific performance is properly made in a suit between the parties, it cannot relate back to the

177 I.C 467=11 R.B. 85= 40 Bom.L.R 545=A I.R. 1938 Bom 357.

——S. 58—*Mortgagee aware of disputed and doubtful title of mortgagor—Transaction, if mortgage.*

Where the mortgagee knows already that the mortgagor is not in possession of the mortgaged properties and that he has only a doubtful and disputed title to them, and when in spite of such knowledge he takes a

T. P. ACT (1882), S. 58

mortgage, the transaction does not amount to a mortgage within the definition of S. 58. *(Lort Williams J.)* GAJANAND AGARWALLA *v.* RANI PRAYAG KUMARI DEBI. 176 I.C. 913=11 R C. 188= A I R. 1938 Cal. 48.

——S. 58 (c) and (g)—Applicability—*Lahan gahan* mortgage—Nature of—Right to decree for sale. *See* PRACTICE—APPEAL. 20 N L J. 285.

——S. 58 (c)—*Construction of deed—Mortgage or sale.*

The distinction between a sale-deed with a condition of re purchase and a mortgage by conditional sale is one of intention to be gathered from the deed itself and the extrinsic evidence of surrounding circumstances. The fact that there was no bargaining as to the amount of consideration and the price was inadequate is more in favour of the deed being a mortgage and not a sale than *vice versa*. Where a deed which purported to be a deed of sale contained a clause to the following effect: "If I (the executant) pay the sale price to the vendees within a period of 8 years the vendees shall without any excuse return the property sold and after 8 years I shall have no right left for the return of the property."

Held, that the deed was a mortgage by conditional sale *(Srivastava, C. J. and Hamilton, J)* FAZAL AHMAD *v* AFAQUL RAHMAN.

anomalous. *(Dalip Singh and Skemp JJ.)* MT.

...h. 145.

...cope—

...ay of

...ster of

interest—Right of landlord to recover rent from mortgagee—Privity of contract—Liability of mortgagee—Covenant by mortgagor and actual payment of rent by him for certain period—If absolves mortgagee.

S. 58, T. P. Act, does not purport to enumerate a complete catalogue of permissible mortgages. Nor does

transfer shall not

the terms of an

mortgaging his

the whole of his

(certainly when

rent reserved by

ed by the amend-

took no steps to

amend S. 58 (*e*) of the Act; nor did it repeal S. 58 (*e*). The Act therefore continues to contemplate an absolute

there is privity of contract between the mortgagee and the landlord, and the mortgagee becomes liable to pay the rent to the landlord. Whether or not the mortgagor covenanted to pay rent to the landlord and whether or not for a period of time he actually paid the rent is immaterial.

Quære.—Whether the English conception of p of estate exists or not in Indian Law. *(Courtn*

T. P. ACT (1882), S. 58.

rell, C. J. and Fazl Ali, J.) SHIVA PRASAD SINGH v. TOM SMITH. 17 Pat. 499=1938 P.W.N. 805.

——S. 58 (f)—*Creation of equitable mortgage—All title deeds—If to be deposited.*

A deposit of some of the title deeds relating to a pro ... ove ... par ... enti ... is n ... all t ... should be deposited ... are material evidences of title and are proved to have been deposited with the intention of creating a mortgage. (*Madhavan Nair and Stodart, JJ.*) RAMANATHAN CHETTIAR v. SHRI DOWLAT SINGJEE THAKORE SAHIB. 1938 M.W.N. 785=48 L.W. 202= A.I.R. 1938 Mad. 865=(1938) 2 M.L.J. 534.

——Ss. 58 (f) and 59—*Deposit of title deeds and advance of money already complete—Subsequent execution of memorandum reciting deposit—Registration—*

... transaction. The writing is therefore only a memorandum or record of a complete transaction, and does not require registration. Its non-registration does not make the equitable mortgage invalid, as the document does not constitute the bargain between the parties. (*Madhavan Nair and Stodart, JJ.*) RAMANATHAN CHETTIAR v. SHRI DOWLAT SINGJEE THAKORE SAHIB. 1938 M.W.N. 785=48 L.W. 292= A.I.R. 1938 Mad. 865=(1938) 2 M L J 534.

... In deciding whether the writing is such a memorandum of a completed transaction or the embodiment of the actual contract, the use of the past or present tense in reference to the deposit may be an indication of the intention of the parties, but cannot of itself be the sole criterion ... ment. A document describ ... letter," began by reciting ... the lenders and the name, father's name, religion, occupation and address of the borrower and continued as follows. "On this date I have executed a promissory note in your favour and received Rs. 1,900. I have deposited with you as security the title deeds of premises ... when I pay back this ... effect is the ... n followed ...

T. P. ACT (1882), S. 66.

terms of the loan were agreed on and the money drawn by the lenders from a fund some days before the title deeds were handed over.

Held, that the document was not a complete record of the contract, that there was a completed mortgage ... to the writing of the ... admissible in evid- ... orth, J.) KRISHNA- ... CHETTY ... 235=48 L.W. 119= ... I.R. 1938 Mad. 547.

... mortgage of equitable mortgage—Validity.*

An equitable sub-mortgage of an equitable mortgage can be validly made. There is nothing in S. 58 (f), T. P. Act, against the validity of an equitable sub mortgage of a mortgage created by deposit of title deeds. (*Madhavan Nai* ... CHETTIAR v. ... SAHIB. ... A.I.R. ...

... tion of creating a security thereon. (*Roberts, C.J., Mya Bu and Dunkley, JJ.*) CHIDAMBARAM CHETTIAR v. AZIZ MEAH. 175 I.C. 206= 1938 Rang.L.R. 316=10 R R. 472= A.I R. 1938 Rang. 149 (F.B.).

——S. 61—*Several mortgages—Provision in later that money thereunder should be paid at time of redemption of earlier one—Right to redeem later mortgage alone.*

——S. 66—*Applicability and scope — Mortgage-simple—Mortgagor in possession—Lease created by—Validity—Burden of proof—Rules of English Law—Applicability of.*

The rules of English law as to the relative positions of ... eated by ... be ap- ... nortgage ... under the Transfer of Property Act, a mortgagor creating a simple mortgage under the Transfer of Property Act does not part with possession, and the right of the mortgagee is only to cause the mortgaged property to be sold for the payment of his debt Where leases executed by the mortgagor are questioned by the mortgagee, the burden is not on the lessees to prove that the leases were usual and given in the ordinary course of management, especially where the mortgagee's dues are satisfied by sale ... granted by the ... ad under S. 66 of ... ly generally to all ... acts which either ... possession, and

T. P. ACT (1882), S. 67

if by such act in his part the security is rendered insufficient. The contention that S. 66 is never intended to apply to a lease granted by a mortgagor in ... unsound. (*Manohar Lall and Chatterji, J.* ... RAY PRASAD CHOUDHARY v. C. G. ATKI[illegible]

175 I.C. 279 = 4 B.R. 565 = 10 ...
1938 P.W.N. 177 = 19 Pat L T. 95 =
A.I.R. 1938 Pat. 189.

——(as amended in 1929), S. 67—Anomalous mortgage—Remedy by way of sale. *See* C. P. CODE, O. 34, R. 4 (3). 20 N.L.J. 285.

——Ss. 67 and 68—*Mortgage of mixed character—Mortgagor's failure to give possession—Rights of mortgagee.*

Where a mortgage is of a mixed character, that is, it comprises the features of simple mortgage and usufruc-

KANHAIYA PRASAD v. MT. HAMIDAN.
I.L.R. (1938) All. 714 = 176 I.C. 492 =
1938 O.W.N. 642 = 1938 A.W.R. (H.C.) 408 =
1938 A.L.J. 746 = 11 R.A. 110 =
1938 A.L.R. 634 = A.I.R. 1938 All. 418 (F.B.).

——S. 67—*Prohibition of sale by usufructuary mortgagee—Principle underlying*

The principle underlying the statutory prohibition of sale by usufructuary mortgagee is that the mortgagee looks to the rents and profits for the satisfaction of his

that spring out of it. (*Dalip Singh and Skemp, JJ.*) MT. MOHAN DEVI v. NAWAB TALIH MEHDI KHAN. A.I.R. 1938 Lah. 145.

obtaining a decree is a matter of procedure. No suitor has any vested right in a course of procedure n[illegible] right to complain even if during the litigation th[illegible] cedure is changed. The Civil Procedure Code no substantive rights. Alterations in the form

respect of both the properties but it makes no pro[illegible] as to the Courts to which he must have recourse in exercising that right of action. He must have recourse to Courts having jurisdiction and the jurisdiction of the Court is determined by the Code of Civil Procedure. In a suit on a mortgage brought in October 1937 in respect of properties situated in Burma and in Madras Presidency in British India, executed prior to 1st April 1937, *i. e.* prior to separation of Burma from India, the Court in Burma has no jurisdiction by reason of Burma

T. P. ACT (1882), S. 68.

(Adaptation of Laws) Order 1937, to deal with the property situate in British India and is not empowered to

the mortgagee are in no way injured because owing to the fact that the procedure provided does not enable him to sue in one Court in Burma for sale of all the mortgaged property, he is not to be deemed to have waived his claim against property situated in British India inasmuch as it cannot be included in the suit instituted in Burma. (*Mya Bu and Mackney, JJ.*) A. K. R. M. M. K. CHETTYAR FIRM v. VALIAPPA CHETTIYAR.
A.I.R. 1938 Rang. 459.

——(as amended in 1929), S. 67 A—*Scope—If re-*

Quaere.—Whether the operation of the section can be

A.I.R. 1938 Bom. 196.

——S. 68—*Mortgaged property not in possession of mortgagor—Suit pending in respect of it—Mortgagee aware of such circumstances—Mortgagor found not entitled to such property—Suit by mortgagee before* [illegible]*'ed period for mortgage money—If*

executed a mortgage in respect of he was not in possession but to which he claimed to be entitled. A suit was pending against him in respect of such properties. The mortgagee was aware of all this. It was stipulated in the

[illegible]stances be considered a wrongful act or

176 I.C. 913 = 11 R.C. 188 = A.I.R. 1938 Cal. 48.

——S. 68—Right to sue—Withdrawal of compensation money—Mortgagee, if can sue to enforce his security. *See* T. P. ACT, S. 73.
1938 A.L.J. 13 (F.B.

——S. 68 (a)—*Applicability and* [illegible] *repay mortgage money—Express or* [illegible] *sue for mortgage money—Deed—* [illegible] *S. 68, T. P. Act, having rega*

T P. ACT (1882), S. 68.

of the words used, refers to an express contract to repay the loan in contradistinction to a contract implied by law.

A usufructuary mortgage deed after providing that the mortgagee in possession was to repay himself, so far

shall repay the entire peshgi money in cash in one lump at one time to the aforesaid zuripeshgidar, I shall take back this deed and enter into possession of the ijara property." The deed then provided that the executant (mortgagor) "shall not put forth any application directly or indirectly to redeem the rehan without making payment of the entire full amount of peshgi."

for sale. (*Wort, C.J. and Manohar Lall, J.*) RAJKUMAR BHARTHI *v.* SURAJDEO SAHI.

177 I.C. 533 = 4 B R 834 = 11 R P. 154 = 19 Pat L.T. 737 = 1938 P.W.N 659 = A.I.R. 1938 Pat. 585.

——Ss. 68 (1) (a) and 67—*Mortgage for a term—Express provision enabling mortgagee to recover his money on the expiry of the term fixed—Decree for recovery of money by sale, if justified*

Where in a usufructuary mor there was among others, an exp the mortgagee to recover his mo term fixed, mortgagee is entitlec term fixed the to sue for and under S. 68 (1) (*a*) read with S. two sections taken together to justify a decree for recovery of money by sale of mortgaged property. (*Niamatullah, Ag.C.J. and Verma, J*) RAM KUMAR *v.* MAHPAL SINGH.

I L R (1938) All. 218 = 174 I C 292 = 10 R A. 566 = 1938 A.W.R. 27 (H.C.) = 1938 R.D. 230 = 1938 A.L.J. 18 = 1938 A.L R. 257 = A.I.R. 1938 All. 188

——S. 68 (1) (c)—*Applicability—Non payment of rent by mortgagor tenant—If amounts to depriving*

fructuary mortgage of house—Repairs not done—Loss in rent—If amounts to a deprivation of part of security—Right to sue for mortgage-money.

T. P. ACT (1882), S. 76.

Under Cl. (*c*) of S. 68 (1) of the T. P. Act, no question of the security becoming insufficient within the meaning of S. 66 arises and the only question is whether or not the mortgagee has been deprived of the whole or part of the security by or in consequence of

and Yorke, JJ.) MATHURA DEVI *v.* MOHAN LAL.

177 I.C. 100 = 11 R O 26 = 1938 O.A. 615 = 1938 O.L.R. 375 = 1938 O.W.N. 806 = A.I R. 1938 Oudh 210.

——(as amended by Act XX of 1929), S. 73—*Interpretation—Part of mortgaged property acquired under Land Acquisition Act—Mortgagor withdrawing money—Remedy of mortgagee—Non-...thdrawal of compensation in S. 68—*

n to a mortgagee by S. 73 of the T. P. is over and above the right that he has under the law to realize the mortgage debt by enforcing his security against the mortgaged property or the property substituted for the mortgaged property. As the surplus proceeds or compensation awarded under the Land Acquisition Act represent the mortgaged property in a new form, the mortgagee is entitled to recover the same in enforcement of his security. The omission of the word 'charge' from Cl. (1) of S. 73 is attributable to the recognition by the Legis-

compensation P. Act, does for enforcing his security against those proceeds or that money. (*Iqbal Ahmad, Harris and Bajpai, JJ.*) GIRDHARI LAL *v.* ALAY HASAN MUSANNA.

I.L.R. (1938) All. 513 = 174 I.C. 702 = 10 R A. 609 = 1938 A.L R. 318 = 1938 A.W.R (H C.) 188 = 1938 O.W.N. 433 = 1938 A L J. 313 = A I R 1938 All. 221 (F B.).

——(as amended in 1929), S. 76 (c)—*Mortgagee in possession—Duty of—"and all the rent"—Meaning and effect of.*

DEO *v.* SHEONARAIN MARWARI.

174 I.C 1001 = 4 B R. 498 = 10 R P. 560 = 10 Pat.L.T. 849 = A.I.R. 1938 Pat. 198.

174 I C 1001=4 B R. 498=10 R P. 560=
19 Pat L T 849=A.I.R 1938 Pat. 196.

——S. 78—*Priority—Prior mortgagee not in possession of title deeds—Subsequent mortgagee lending* bona fide *without notice of prior mortgage—Omission to call for title deeds—If ground for postponing him and giving priority to prior mortgagee*

The omission on the part of a subsequent mortgagee who lends money *bona fide* in ignorance of the claim of a prior mortgagee, to
itself sufficient to postp
mortgagee, when the
title deeds It is only
sion of the title-deeds
notice can be invoked
the other party to call
and Varadachariar,
NARASIMHA RAO NA
11 I
47 L W 40=A.I.R 1938 Mad 161.

——S. 79—*Applicability—Absence of advances subsequent to second mortgage—Right of prior mortgagee to priority.*

Where a mortgage is executed by way of continuing security for the payments of all debts due and thereafter may be due by the mortgagor and a subsequent mortgagee takes the mortgage of the same property with knowledge of the prior mortgage and the prior mortgagee thereafter does not make any advances, the prior mortgagee is entitled to priority not only in respect of

certain amount for purpose of S. 79 will not disentitle
the first mortg
that sum. (*Iq*
BAD BANK, LT
177 I C
1938 A

——S. 81—*Applicability—Marshalling—Right to claim—Conditions—First mortgagee releasing one property from mortgage and then suing for sale of other item—Subsequent mortgagee of latter—Claim by to marshalling—Sustainability.*

Marshalling implies the existence of two sets of properties one of which is subject to both the mortgages and the other is subject only to the earlier mortgage. When there are no two items of prope
sold but only one item, the doctri
cannot be invoked When there are
be marshalled, there being only one
perties liable to be sold being subject t
gages, the doctrine cannot be invoked.
right of a mortgagee to release any p
he right of
The right
o the condi-
he rights of
the first mortgagee Where the first mortgagee releases one of two properties mortgaged to him and subsequent-

(*Pandrang Row, J*) MUTHAMMAL, *In re.*
177 I.C. 681=11 R M. 367=
1938 M.W.N. 266=47 L.W. 261=
A.I.R. 1938 Mad. 503=(1938) 1 M.L.J. 310.

——S. 81—*Subsequent mortgagee purchasing property in execution of his decree and also purchasing rights of prior mortgagee—Right to compel in execution of prior mortgage, sale of properties not purchased by him.*

42 C.W N. 502.

——S. 82—*Mortgage over three properties—Mortgagor selling property No 3 to X—X retaining consideration agreeing to pay off entire mortgage—Mortgagee subsequently buying property No 1—Liability of property No. 3 for entire mortgage debt—X, if personally liable.*

After creating a mortgage over three properties, the mortgagor sold property No. 3 mentioned in the mortgage instrument to *X* who did not pay to the mortgagor whole of the price but retained for payment to the mort-
calculation was found
tgage. The agreement
was that the latter should
roperty No. 3 which he
her two properties. *X*

virtue of his agreement with him and that the mortgagee was competent to realise the said money from *X*. The price paid by the mortgagee represented the true values of the property in an unencumbered State In a suit by the mortgagee to enforce the mortgage against *X*,

Held, (*i*) that *X* was not personally liable for any sum that might be found due on the mortgage; (*ii*) that the benefit of the contract between the mortgagor and *X* by which the latter agreed to discharge the whole of the

——Ss. 83 and 84—*Deposit of money by subsequent mortgagee to credit of prior mortgagee—Latter not complying with terms of S. 83—Subsequent mortgagee's right to interest on amount deposited from*
gagee.

T. P. AOT (1882), S. 83.

Where a subsequent mortgagee retains a part of the consideration money in order to discharge a prior mortgage and deposits that amount in Court under the pro-

terms ... it in full discharge of his dues. If he does not do so,

42 C.W.N. 1177.

——Ss. 83 and 84—*Deposit to credit of surviving*

of the surviving mortgagee and to that of the estate of the deceased mortgagee expressly or by necessary implication, impleading his sons and his heirs and it is subsequently found that one of the sons had no right to any part of the mortgage money, interest ceased to run from the date of the deposit (or possibly from the time when the notice required by S. 83 had been served on those

money. (*Iqbal Ahmad, Harries and Allsop, JJ.*) RAM GOPAL *v.* LACHHMAN DAS.

I L R. 1938 All. 767 = 176 I.C. 509 = 1938 A L J 61 = 1938 O.W.N. 925 = 11 R A 123 = 1938 A L R 630 = 1938 A W R. (H C) 417 = A I.R. 1938 All 423 (F B).

——Ss. 83 and 84—*Deposit—Validity—Deposit in ... Guardian ... effective*

gagee, the deposit, though made earlier, is not valid. (*Venkatasubba Rao and Newsam, JJ.*) SUPPAN CHETTIAR *v.* RANGAN CHETTI. 1938 M W N. 356 = A I R. 1938 Mad. 405.

——S 84—*Effect of valid deposit—Mesne profits—Usufructuary mortgage—Deposit ... sal of mortgagee in possession ... withdrawal of deposit by mortga... duce money again in Court—Right to mesne profits.*

A mortgagor, in the case of a usufructuary mortgage, who makes a valid deposit, would be entitled to mesne profits from the mortgagee in possession if the latter unreasonably and without just cause refuses to accept the

T. P. AOT(1882), S. 92.

deposit and to surrender possession of the properties. But if the mortgagor after keeping the money in deposit for some time, subsequently withdraws the deposit from

... such withdrawal. (*Venkatasubba Rao and Newsam, JJ.*) SUPPAN CHET- ... 1938 M.W N. 356 = A I.R 1938 Mad. 405.

... *under—Effect of—Suit on ... leading a later mortgagee— ... purchaser—Rights as against non impleaded later mortgagee.*

Under old S. 89 of the T. P. Act, on the making of ... ie security as well as the ... extinguished and for the ... er his security there is ... conferred by the decree. ... made a party to a suit ... ot affected by the decree ... aser in execution of such a decree, obtains no title whatsoever which could prevail against the second mortgagee or purchaser in execution of a decree obtained on the second mortgage. (*Courtney-Terrell, C.J. and Manohar Lal, J.*) GOBIND SARAN SINGH *v.* RAM AUTAR SINGH. 16 Pat. 709 = 174 I C 455 = 10 R P. 516 = 4 B.R 443 = 1938 P.W N 86 = 19 Pat L T. 227 = ... Pat. 170.

... *aid mort-*

... not come ... he is not ... ights of a prior mortgagee whose mortgage has been redeemed with the money advanced by him. (*Sen, J.*) PADMA LOCHAN ROY *v.* SHAIK AJIMADDIN.

42 C.W N. 1106.

——(as amended), S 92—*Ifretrospective.*

Per *N. J. Wadia, J*—S. 92 of the T. P Act (as amended) has retrospective effect. (*Broomfield and Wadia, JJ.*) ISAP *v* UMARJI 174 I C. 188 = 10 R B. 431 = 39 Bom L R 1309 = A I.R. 1938 Bom. 115.

1938 Rang.L R 430 = 177 I C 766 = 11 R R 164 = A I R 1938 Rang 306 (F B).

——(as amended in 1929) S 92—*Applicability—Insolvency proceedings pending on 1—4—1930—Claim to priority by mortgagee paying off prior mortgages—*

The appellant obtained a decree against two brothers on 9—4—1927, creating a charge in his favour on a house of the two brothers subject to two previous mortgages existing on the house. On 10—1—1928, the respondent paid off the two previous mortgages on behalf

of the brothers and on 29—1—1928, the brothers executed a mortgage to the respondent of the said house The mortgagors applied in insolvency on 11—11—1929 and were adjudicated insolvents on 13—12—1930 and a receiver was appointed. The receiver proceeded to sell the house which was all along in the possession of the insolvents. The appellant and the respondent as secured creditors consented to the sale on condition that their rights would attach to the sale proceeds. After the sale each of them claimed priority over the other, the respondent claiming subrogation to the rights under the previous mortgages he had paid off, while the appellant
prior creditor, because the respond
to subrogation as he had not taker
ment to that effect as required
Property Act, as amended in 1929, which was retrospective.

in the original proceedings on the record o
applied to be brought, i e, the insolvency
which commenced on 11—11—1929, (2) that the claim to priority was a part of the insolvency proceedings

without a registered agreement and was entitled to priority over the appellant in respect of the sale proceeds of the house. (*Divatia and Sen, JJ.*) CHUNILAL DEEPCHAND v BIBUBAI GULAM.

177 I.C 657 = 11 R B 115 = 40 Bom L R 517 = A.I R. 1938 Bom. 386.

——S. 92 (as amended in 1929)—*Applicability—Redeeming co mortgagor.*

S. 92 does not apply in the case of a mortgagor. But it does apply in the case of a co-mortgagor and it deals

40 Bom L R 1001 = A I R 1938 Bom. 508

——S 92 (as amended by Act XX of 1929)—*Co-mortgagor redeeming entire mortgage—If can claim contribution from co mortgagors by foreclosure or sale of their shares—Punjab*

If a subsequent mortgagee or purchaser pays off a

much stronger than that of a subsequent mortgagee or purchaser who pays off a prior mortgagee, for, under the law it is incumbent on the mortgagor to pay the entire mortgage charge before he can redeem his own share of the mortg
cable in th
JJ.) A
GANGA S

——S.
sale—Righ
132. 1938 O.W.N. 290.

——S. 92—*Mortgage dues paid up by several persons—Right of one of them to subrogation.*

T. P. ACT (1882), S. 92.

Where the entire mortgage dues have been paid up by more than one person and the mortgage has been redeemed in full, there is nothing in the proviso to S. 92 of the T P. Act which would prevent one of such persons from claiming the right to be subrogated in the place of the mortgagee to the extent of the amount contributed by him. (*Sen, J*) PADMA LOCHAN ROY v. SHAIK AJIMADDIN. 42 C.W N. 1106

——S 92 (as amended)—*Principles underlying—Applicability as a rule of equity—Circumstances.*

The principles underlying S. 92 of the Transfer of Property Act (as amended) ought to be taken as a guide

174 I C 188 = 10 R B 431 = 39 Bom L R. 1309 = A I R 1938 Bom. 115.

—S 92 (as amended in 1929)—*Retrospective*

the provisions of the amended S 92 of the Trans-
, except in
pril, 1930, in
that date.
(*Thomas, C J, Zia ul Hasan and Hamilton, JJ.*) B.

101 =
.B.).

ended by the Act of 1929 have retrospective effect. (*Sen, J.*) PADMA LOCHAN ROY v. SHAIK AJIMADDIN. 42 C.W N. 1106.

——S. 92 (as amended in 1929)—*Scope—If retrospective — Purchaser of mortgaged property discharging portion of mortgage debt prior to amendment—Claim to partial subrogation—Sustainability.*

S. 92 of the T P Act, as amended in 1929, is not retrospective, and under the law which prevailed prior to the amendment a purchaser of mortgaged property d

Abdur Rahman, JJ.) SRINIVASALU NAIDU v. DAMODARASWAMI NAIDU.

1938 M W N. 708 = A I R 1938 Mad. 779.

——S. 92 (as amended in 1929)—*Scope—Retrospective operation.*

S. 92 of the T P Act as amended in 1929 is retros-

tion.

A vendee of the equity of redemption in mortgaged properties who pays off prior mortgages on the properties out of the sale price left with him under an express
such payment of prior
ogation under S. 92
as amended in 1929,
ement conferring the
nt to pay off the prior
(*Wort, A C.J. and*
DHANIA v KAIROO
MANDAR. 176 I C 655 = 4 B R 748 = 11 B P. 97 = 19 Pat L.T 500 = 1938 P.W N. 584 = A.I.R. 1938 Pat. 532.

T. P. ACT (1882), S. 92.

——S. 92, Paras. 1 and 3 (as amended)—*Applicability—Purchaser of portion of mortgaged property redeeming whole—Position and rights of.*

Where a purchaser of a portion of the mortgaged property redeems the property, he is in the position of a co-mortgagor and his case falls under para 1 and not para 3 of S. 92 of the T P Act Hence on redemption, he would, according to para. 2 of S. 92, be subrogated to the rights of the original mortgagee. (*Thomas, C J and Zia ul-Hasan, J.*) KUNDAN LAL *v.* FAKIR BAKHSH 1938 O L R 204= 1938 O A 472=1938 O W N 489

——S. 100—Charge—Creation—Agreement to mortgage—Effect of—If creates charge *See* TRANSFER OF PROPERTY ACT, SS 58 AND 100, 40 Bom L R 545

——S. 100—*Charge—Creation of—Compromise in execution proceedings—Attachment of property continued—Stipulation that judgment-debtor should not transfer attached property till payment of entire decretal amount—Charge on property—If created*

No doubt mere attachment of property does not create a charge on the property in favour of the attaching creditors But where the parties enter into a compromise in the execution proceedings whereby not only the attachment of the property is continued but it is specifically stated that until the payment of the entire decretal amount the judgment debtor shall not transfer the attached property by mortgage, sale or gift to any other person, and that in default of payment of the instalments fixed the decree holders would be entitled to realize the entire decretal amount from that property there can be no doubt that a charge upon the property is clearly created in favour of the decree holders (*Tek Chand, J*) TIRATH RAM *v* OFFICIAL RECEIVER FEROZEPORE 177 I C. 332=11 R L 296= 40 P L R 429=A I R 1938 Lah 509

——S 100—*Charge—Creation—* Mortgage by co sharer of his own share as well as of share of another co-sharer to be pre empted—Subsequent pre-emption—Charge on pre-empted share—If created *See* T P ACT, S. 43 1937 A W R 1070=A I R 1938 All 22

——S 100—*Charge—Liability to arise in future—Validity*

A valid charge on immovable property could be created to secure a contingent liability or to take effect on a future contingency (*Spargo J.*) U LAT *v* U PON GAUNG 177 I C 601=11 R R 148= A I.R. 1938 Rang. 145

——S 100, Proviso—*Applicability—Auction-purchaser—Nankar created by Settlement Court decree—If constitutes charge—Liability of auction-purchaser of property to pay nankar arrears.*

An auction purchaser takes the property of the judgment-debtor subject to the charge on that property. A purchase by an auction-purchaser is not a transfer to which the T P Act applies As the T. P Act does not apply to him, the proviso to S 100 of the Act does not apply to him, and consequently he can get no benefit under it Nankar created by a Settlement Court decree and entered regularly every year in the under proprietary khewats and also in the wajib-ul arz, constitutes a charge on the village Consequently a mortgagee of nankar rights is entitled to recover arrears of the said nankar from an auction-purchaser of the village, and the latter cannot avoid the liability of payment by virtue of S 100 of the T.P. Act on the ground that he was a *bona fide* transferee without notice (*Srivastava, Ag C.J., Ziaul-Hasan and Hamilton, JJ*) HAR NARAIN *v.* BANK OF UPPER INDIA 172 I.C 855=1938 O A 70= 10 R O. 197=1938 O W N 62= A I R. 1938 Oudh 84 (S B.).

T. P. ACT (1882), S. 106.

——S. 101—Mortgage, if extinguished—Mortgaged properties under attachment against the owner in execution of money decree—Mortgagee purchasing them during the continuance of attachment—Effect. *See* C. P. CODE, S 64 1938 M W.N. 60.

——Ss 105 and 107—*Applicability—Municipal slaughter-house and fish-bazaars—Right to collect fees of—Letting of—If lease—Essentials of validity—Lease for one year reserving yearly rent of value of over Rs.* 1,000 *—Execution by lessee alone—Signature of President and two Councillors affixed after registration—Sufficiency—Suit upon—Maintainability—Contract Act, S. 65—Madras District Municipalities Act, Ss. 68 and 69.*

The letting by a Municipal Council of the right to collect the fees of the municipal slaughter-houses and fish bazaars is a lease as defined by S 105 of the T. P Act, the right to collect the said fees amounting to profit arising out of land and therefore immovable property Under S 107, such a lease must be executed both by the lessor and the lessee and a lease for one year reserving an yearly rent has to be made by a registered instrument. Where such a lease is executed by the lessee alone and registered, it is invalid under S. 107. Where it is not executed on behalf of the Municipal Council before registration, it is not in conformity with the requirements of S. 107, although subsequent to registration the President and some members of the Municipal Council put their signatures on it; and where the contract is of more than Rs. 1,000 it is not valid and binding in the absence of proof that the Municipal Council passed a resolution authorising the President or the members to execute such lease as required by S. 68 of the Madras District Municipalities Act. Failure to comply with Ss 68 and 69 of the District Municipalities Act renders the lease unenforceable and incapable of being sued on But if the lessee has had the advantage of the lease, the invalidity of the lease would not prevent the Municipal Council from recovering such amount as may be found reasonable under S 65 of the Contract Act. (*Abdur Rahman, J*) MOHAMED ROWTHER *v.* THE TINNEVELLY MUNICIPAL COUNCIL. 47 L.W. 668= 1938 M.W N 634=A I.R. 1938 Mad. 746.

——S 105—'*Lease*'—*Kabuliyat executed by occupant of premises to owner of premises—If creates lease—Admissibility against executant.*

A kabuliyat executed by a person occupying certain premises and accepted by the owner of the premises can in no way be considered to be a lease as defined by S 105, T. P Act, and is not sufficient to bestow title on the occupant of the premises. But though it does not operate as a lease it is not on that account inadmissible against the executant himself, when the kabuliyat contains a statement against his own interest. (*Mahomed Ismail, J.*) MAHOMED HASAN *v* BUDDHU. 172 I C 873=10 R A 445=1938 A L.R. 60= 1937 A.W R. 1085=1937 A.L J. 1297= A I R. 1938 All 32.

——S. 106—*Applicability—Leased for—Building purposes—Lessee to have no right in trees on land—Covenant against alienation without consent of lessor—Term not mentioned—Inference—Presumption of permanency—Ejectment—Lessee's right to compensation.*

There is no presumption, from the mere fact that a lease as for building purposes, that it creates a permanent tenancy In the absence of anything in the lease itself the ordinary rule laid down in S. 106, T. P. Act should be applied and the Court should infer a monthly tenancy only. The purchaser of a superstructure standing on land belonging to a temple, classed as "village site poramboke" entered into negotiations with the

lease, which
hat the lessee
and (which was
w tiled house
thereon, that the lessee was to pay ground rent at a certain rate per year to the temple, that he shall have no right to the trees on the land and that he shall not sell or encumber the house without previous intimation to the lessors nor shall he alienate to persons belonging to communities not approved by the lessors. In case of default either in payment of rent or fulfilment of the conditions, the lessor was entitled to give notice and if that notice was not complied with the lessee was to pull down the superstructure and give vacant possession to the temple. The lease however, contained no stipulation as to the term for which it was to run. It was *found that the lessee was not guilty of breach of any of* the conditions of the lease.

Held, that the term of the leaase had to be inferred from the writing in which it was embodied, that there was no presumption that the lease was for any particular period or perpetual, and that the proper legal
was that it was a monthly lease.

Held further, that S. 51 of the T. P. Act
application to the case, so as to entitle the l

in such a case. (*Wadsworth, J.*) SHANMUGHA DESIKA GNANASAMBANDA PANDARASANNADHI *v.* ANANTAKRISHNASWAMI NAIDU. 48 L.W. 894 = 1938 M.W.N. 1236.

——S. 106—*'Contract to the contrary'—Agreement of tenancy—Construction.*

A letter embodying an agreement of tenancy was as follows:—"We rent the vacant land on a fixed rent of Rs. 31 per month and declare that we will pay the rent by the fifth of each month and when it will be necessary to give *khas* possession w
you within 7 days"

Held, that there was
within the meaning of S.
Act, and that the tenan
terminable by 15 days an
with the end of a month
effect of the concluding p
the tenancy was determin
plated by S. 111 of the Transfer of Property Act, the tenant covenanted to give *khas* possession within seven days of such determination

Held, further, that even if the lett
of reducing the statutory period of 1
days must expire with the end of a n
ancy. (*Panckridge, J.*) BAIDYANA
ONKERMULL MANICKLAL.
I L R. (1938) 2 Cal 261 = A.I.R. 1938 Cal 656.

an indefinite term, which as soon as three months' rent is in arrear, reduces the tenancy to one at will for on that date the landlord is entitled to eject the tenant. There is a contract to the contrary and the holding cannot be regarded as a monthly tenancy (*Stone, C J. and Bose, J.*) ABDUL RAZAK *v.* SETH NANDLAL.
1938 N L J. 317 = A I R. 1938 Nag 506.

——S. 106 (as amended)—*Service of notice—Procedure—Notice by Registered post—Presumption*

Where a registered notice was returned with a note 'refused', in view of the amendment of S. 106, T. P. Act and of the presumption that the posting of a letter in due course raises, it cannot be said that there has not been a proper service of the notice. (*Ismail, J.*) BACHCHA LAL *v.* LACHMAN. 176 I C. 393 = 11 R.A. 100 = 1938 A L R 607 = 1938 A L J. 511 = 1938 A.W.R. (H C.) 328 = A I R. 1938 All. 388.

——S. 107—Lease of house for 8 months in writing—Registration—Necessity. *See* EVIDENCE ACT, S. 91—*LEASE.* 1938 O.A. 785 = 1938 O.W N. 1080.

——S. 107—*Lease reserving yearly rent not regis-*

a yearly
eye of law
o month.

P. Act, S. 51.

The Mohunt of a thakurdari settled a piece of homestead land with the defendant in 1928 on a verbal agreement for a permanent lease. The defendant paid a sum of Rs. 250 to the Mohunt as salami and erected a pucca structure on the land. Subsequently that Mohunt was removed and was succeeded by the plaintiff who sued to eject the defendant from the land. The defendant had taken no steps to get a registered lease or to get specific performance of the oral agreement

able in law, and he was not entitled to retain possession as the permanent lease set up by him was not

said that there was any case of money having been

T. P. ACT (1882), S. 108.

the analogy of S. 51, T. P. Act. (*Agarwala and Varma, JJ.*) MAINA SAHU *v.* BALAK DAS. 177 I C. 522=4 B R. 829=11 R.P. 151=1938 P.W N. 386=A.I.R. 1938 Pat 435

——S. 108 (c)—*Effect of—Proprietor interfering with sub-lessee—Remedy—Measure of damages.*

S. 108 (c), T. P. Act, secures to the lessee the benefit of an unqualified *covenant for quiet title.* Where the lessee of a theatre grants a lease of the theatre to another person for a certain period but before the expiry of the period, the original lessor, the proprietor of the theatre who has previously served the lessee with a notice determining the lease, intervenes and prevents the sub lessee from using the theatre and the latter is compelled to take a fresh lease from the proprietor on payment of an additional sum, there is a breach of covenant for quiet enjoyment, which entitles the sub lessee to bring a suit for damages against the original lessee. The sub-lessee is entitled to recover from the lessee the extra amount which he was required to pay to secure a fresh lease from the proprietor over and above other damages. (*Niyogi, J.*) GAJADHAR *v.* RAMBHAN. A I.R. 1938 Nag 439.

——S. 108 (j)—*Assignment of lease—Some of heirs of deceased lessee—If can be sued for rent.*

A suit for rent cannot be decreed against some only of the heirs of a deceased lessee, when the plaintiff lessor admits an assignment of the lease in favour of another it does not prove that the heirs in possession (*S K. Ghoseand P*...

the transferee—Mortgagee from lessee with knowledge of original lease and its terms—Subsequent payment of rent by mortgagee—Lessor, if can sue such mortgagee for rent.

S. 108 (j) of the T. P. Act while giving the lessee the right to transfer his interest, also lays down that the lessee shall not by reason only of such a transfer cease to be liable for the obligations under the lease This

...rights under the lease Where a mortgagee from a lessee had not only notice of the terms of the original lease between his mortgagor and th... actually undertook by an express te... mortgage in his favour, to pay the... lessor and did in fact pay it to him

...applied to a case where the mortgagee has paid rent to the lessor and the latter has accepted it from him (*Niamatullah and Verma, JJ.*) GIRENDRA NARAIN *v.* GANGA NARAIN. I L.R 1938 All 288=174 I C 245=1938 A L R 252=10 R A 551=

...tion of the parties evidently is that the lease is to commence from the beginning of 1318 and is to end at the

T. P. ACT (1882). S. 122.

end of 1324. Ordinarily of course the lease will last up to the midnight of the 1st Baisakh, 1325 But the express stipulation in the lease that the time limited by the lease is up to the end of 1324 clearly indicates that there is an express agreement to the contrary within the meaning of S. 110 of the T. P. Act In view of this express agreement between the parties, the lease lasts *only up to the last day of the year 1324 B S, and does* not last up to the midnight of the 1st Baisakh of the next year. (*Nasim Ali, J.*) DEB DAS LALA *v.* SK. ABDUL GANI. I.L.R (1938) 2 Cal 134=177 I.C. 880=11 R C 285=67 C L J. 291=42 C.W N. 443=A.I R 1938 Cal. 358.

——Ss. 110 and 106—*Monthly tenancy commencing from 1st of a month—Notice to quit—When should expire.*

The second paragraph of S. 110, T. P. Act is not independent of the first paragraph. If a lease is said to commence from a certain date, it means from the end of that date, and will have another day added on at the end. Where, therefore, a monthly tenancy is expressed to commence from the 1st of a month, the notice to quit should be so framed as to expire at the end of the 1st of the succeeding month. In such a case a notice to quit expiring at the end of the month is invalid. (*Ameer Ali, J.*) CHARU CHANDRA GHOSE *v.* BANKIM CHANDRA SETT. 42 C.W.N. 1115.

——S. 111—*Registered lease granted before expiry*

...acts done under it in the ... of the registered 'lease' ... trespasser. (*Stone, C.J. and Puranik, J.*) MULJI SICKKA & CO. *v.* NUR-MOHAMMAD. A I R. 1938 Nag. 377.

——Ss 111 (d) and 2 (c)—*Tenures created before passing of Act—Acquisition of such tenures—If can merge them in superior right.*

Where tenures are created before the passing of the Transfer of Property Act, the acquisition of such tenu-

...*Ali and Remfry, JJ*) KUMAR CHANDRA SINGH *v.* SARAT CHANDRA GOSWAMI. A.I.R. 1938 Cal. 128.

reasonable time to do so from the date of service of notice. Otherwise the notice is bad. (*Mitter and Biswas, JJ*) PRAVAT CHANDRA SYAM *v.* BENGAL CENTRAL BANK LTD I.L.R (1938) 2 Cal 434=42 C W N. 761=A I.R. 1938 Cal 589.

...and the donor is entitled to revoke the registered deed of gift of immovable property prior to its acceptance

T. P. ACT (1882), S. 123

(*Wadsworth, J.*) PAPATHI AMMAL *v.* DORAISWAMY NAICKER. 48 L W. 764 = 1938 M.W N. 1224

——S. 123—Applicability—Buddhist religious gifts. *See* BUDDHIST LAW (BURMESE).
A.I.R. 1938 Rang. 303.

——Ss. 130 and 132—*Applicability—"Pahunch"—Transfer of—Form of—Equities.*

A pahunch is an ordinary receipt At best it evidences acknowledgment of a det . .
actionable claim Und
is only transferable by
transfer being subject t...
provided therein (*Mehta, J.*) JHANGALDAS CHIMAN DAS *v* CHETUMAL BULCHAND. 32 S L R 640 = 10 R.S 220 = 173 I C. 591 = A.I.R 1938 Sind 24.

——S. 130—*Assignment of debt—Conditions*

An assignment of a debt to be valid must be of the whole debt. Where partners in a firm become insolvent and there is also a minor partner, the assignment by the Official Assignee of a debt due to the firm cannot be said to be of the whole debt because the minor's interest in the partnership cannot be assigned. Even assuming that assignment of part of a debt can be made, assignment of part which is indefinite is invalid. (*Lort Williams and Jack, JJ.*) GHISULAL GANESHILAL *v.* GUMBHIRMULL A I R. 1938 Cal. 377.

——S 130—*Form of transfer—Money in deposit in bank in name of party—Agreement in writing between him and another—Intention that thereafter one part of it should belong to one of them and the other part to the other—Effect—If amounts to transfer of actionable claim.*

Where it is agreed to between the parties to a document that one portion of certain money lying in deposit in a bank in the name of one of those parties should thenceforward belong to one of them and the other portion to the other, the document can be viewed as an assignment of an actionable claim within the meaning of S. 130, T P Act. That section does
such an assignment should be in any
that there should be consideration for
words are necessary to effect the transf
beneficial interest in movable property, if the intention of transfer is clear from the language used If the intention is fairly clear that the money in deposit in the bank should be split up into two parts, one of which is to go to one of the parties and the other to the other party, that operates as an assignment of the entire debt in two separate portions to two separate individuals. (*Pandrang Row and Venkataramana Rao, JJ.*) RAMASWAMI CHETTIAR *v* MANIKKAM CHETTIAR.
176 I C. 617 = 11 R M. 127 = 1937 M W N. 1249 = 47 L.W. 118 = A.I.R. 1938 Mad 236 = (1938) 1 M L J. 56.

——S. 130 (1)—Applicability—Liat . . .
future—Relationship not yet arisen. *See*
Ss. 3 AND 130 (1). A I.R.

——S 130 (1)—*Effect—Dispensing*
debtor—Transference of legal title.

assignee sues him. (*Braund, J.*) AVIET STEPHENS, *In the matter of.* 175 I.C. 786 = 11 R.R 18 = A.I.R. 1938 Rang. 1.

T. P. AMENDMENT. ACT (1929), S 63.

——S 130 (1)—*"Hypothecation" or "charge"—If a transfer.*

A mere "hypothecation" or "charge" is a "transfer" for the purpose of S. 130 (1) (*Braund, J.*) AVIET STEPHENS, *In the matter of.* 175 I C. 786 = 11 R R 18 = A I R. 1938 Rang 1.

——S. 130 (1)—*Right to sue conferred by—If conflicts with 'reputed ownership' under S. 52 (2) (c) of*

a debtor in
P. Act, and
ng rise to a
condition of "reputed ownership" under S. 52 (2) (*c*), Presidency Towns Insolvency Act, are two entirely separate and distinct things. It may very well be that so far as the assignee's right to sue is concerned it is complete, and yet there may be left with the assignor such an appearance of continued or reputed ownership as to invoke the order and disposition clause. (*Braund, J.*) AVIET STEPHENS, *In the matter of.*
175 I.C. 786 = 11 R R. 18 = A.I R. 1938 Rang. 1.

——S. 134—'Transferee"—Person holding charge under S 55 (6)—Rights of. *See* T. P. ACT, S 55 (6).
48 L W 766.

——S. 135—*Transfer by mortgagee—Payment by mortgagor to mortgagee without notice of transfer—Transferee—When bound.*

Payments of interest and payments on account of principal, made by a mortgagor to a mortgagee after, but without notice of, a transfer must, in absence of collusion, be allowed to the mortgagor as against the transferee. The principle applies to a case when the mortgagor has paid off the whole of the mortgage debt in the absence of notice. The question of notice will however only arise if payment has in fact been made; and if it is shown that no payment was in fact made by the mortgagor, no question of notice arises, and the transferee is entitled to recover the amount due on the

the intention of the parties that the transaction was to be effective. (*Wort, J.*) FATEH BAHADUR *v.* MT. SUBHAGO KUER. 175 I.C. 563 = 4 B R. 614 = 11 R P. 1 = A I R 1938 Pat. 265.

——S 136—*Applicability to decrees.*

A decree does not come within the category of actionable claims, but the principle involved is the same. (*Leach, C.J., Varadachariar and Pandrang Row, JJ.*) P. LINGAMURTHI, *In the matter of.*
I.L.R. 1938 Mad. 399 = 174 I.C 44 = 10 R M. 641 = 47 L.W 192 = 1938 M W.N. 220 = A I R. 1938 Mad 276 (F B.).

42 C.W.N. 38.

ed in those sections have no retrospective effect. (*Thomas, C. J., Zia-ul Hasan and Hamilton, JJ.*) B KUNDAN LAL *v.* FAQIR BAKSH. 174 I.C. 7

T. P. AMENDMENT ACT (1929), S. 63.

10 R.O. 264=1938 O.W.N. 401=1938 O.A. 270= A I R. 1938 Oudh 127 (F.B.).

——S. 63 (d)—Construction and Scope— "Proceedings etc. pending on 1—4—1930"—Insolvency proceé- priority pending TY ACT

(AS AMENDED IN 1929), S. 92.

TREASURE TROVE ACT (VI

Offence under—Abetment of—Person

ing of treasure but afterwards sharing same with finder —If guilty.

A person who was not present at the finding of a treasure and who has had no sort of connection with the matter up to the time when the actual finder decides not

when it changes hands. When the money is deposited in a bank it becomes a part of the assets of the bank. the latter becomin, person who deposits

it changed hands,

177 I C 924=39 Cr.L J. 953=1938 M.W.N 47 L W. 813=A.I R. 1938 Ma (1938) 1 M.I

TRUST—*Appointment of trustee—Appointm himself as trustee by person having right of ment—Legality*

The appointment of himself as trustee by a person having the right of appointment is not *per se* illegal (*Panckridge, J.*) PURAN CHAND *v.* ADVOCATE GENERAL OF BENGAL. 42 C.W.N. 201.

——*Creation of—Essentials—Charitable endowment by a Hindu in Punjab.*

nent by a What is cified and should be set apart as dedicated to that purpose. It is necessary that the donor should divest himself of the property. The evidence of divestiture may be contemporaneous in such a case the subsequent acts and conduct of the donor are irrelevant and cannot re-invest him. (*Lord Thankerton*) SUNDER SINGH *v.* SUNDER SINGH 65 I A. 106=172 I.C. 993=47 L.W. 239= I.L R. 1938 Lah. 63=32 S.L R. 350=

TRUST.

1938 A.L J. 194=1938 O.W.N. 245= 1938 O.L R. 104=1938 A.L R. 138= 1938 A.W.R. (P.C.) 74=40 P.L R. 247= 4 B.R. 317=66 C.L J. 524=10 R P C. 202= 1938 O.A. 371=42 C.W N. 933=1938 M.W.N. 621= 1938 P.W.N. 548=40 Bom L R. 724= A.I.R. 1938 P.C. 73=(1938) 1 M.L J. 359 (P.C.).

Where by a deed of relinquishment a father relinquished all his rights and property to his son and purported to put him in possession forthwith and the son by means of an *ikrarnama* undertook among other things to pay a certain sum to his illegitimate brothers

——*Public or private—Criterion — Intention of founder as gathered from circumstances.*

Zia ul Hasan, J.) RAM DULAREY *v.* RAM LAL. 1938 O A. 945=1938 O W N. 660.

——*Suit on behalf of — Right to maintain— Public charitable or religious trust created by Hindu under will—Appointment of son as trustee for life and after him his sons—Son guilty of misconduct and breach of trust and leaving British India—Suit by grandsons for possession and mesne profits of trust properties illegally alienated by their father—Maintainability—Proper remedy*

Persons who are not the present trustees are not entitled to maintain in that capacity a suit on behalf of the trust for possession of immovable properties of the trust or for mesne profits. Where under a will executed by a Hindu a trust is created in respect of certain charities, and the testator appoints his son as trustee for life and after the latter's death his sons (*i.e.*, the testator's grandsons) as trustees, the grandsons cannot during their father's lifetime maintain a suit for possession of trust properties. The fact that their father has been guilty of misconduct and breach of trust and has alienated the

TRUST.

trust properties or that he has totally failed to perform the trust and has left British India would not be sufficient for holding that the father *ipso facto* ceased to be a trustee and that the plaintiffs directly became trustees

gious trusts, S 53 or S 73 of the Madras Hindu Religious Endowments Act will govern the case (*Varadachariar and Abdur Rahman, JJ.*) ARAVAMUDHU IYENGAR *v.* RAMANUJA IYENGAR 1938 M.W.N. 1153=48 L W. 770= (1938) 2 M.L.J. 982

——Tracing—Deposit by employees as security—Trust if created—Liquidation—Preferential right of such depositors. *See* COMPANIES ACT, S 229. 1938 M.W.N. 7.

——*Transfer to trustee of properties for payment of debts of transferor—Creditors rights—Communication to creditor—Necessity—Right of revocation.*

Where a legal transfer of property has been made to trustees for payment of the debts of the owner transferor, the creditors being neither parties nor privies thereto the creditors do not thereby become *cestui que trust*, and the trustees are mere mandatories. Until the mandate has been acted upon, the owner of the properties, who alone stands towards the trustees in the relation of *cestui que trust*, can re call the money and authority at pleasure. It is an arrangement by the debtor for his own convenience only, and there is no privity between the agent and the creditors. Where, however, the trust in

induced to a forbearance in respect of their claims,

RAO 48 L W. 564=1938 M.W N 1086= (1938) 2 M L.J. 1054

——*Trustee—Co-trustees—Joint status of—Suit by one only without impleading others—Maintainability*

The office of trustee, irrespective of the number of trustees, is a joint one and co-trustees form, as it were,

——*Trustee—Co-trustees — Transfer management by one to another for Legality*.

The transfer of the right of a trustee for consideration is void being against The right of a trustee or hukdar of a chat... the charity or manage the endowed property cannot be transferred for consideration, although the alienee may be a member of the same family as the transferor-trustee. (*Venkatasubba Rao and Abdur Rahman, JJ.*)

TRUST

VEDAKANNU NADAR *v.* RANGANATHA MUDALIAR 1938 M W N. 983=48 L W 829= A I.R 1938 Mad. 982=(1938) 2 M L J 663.

——*Trustee* de facto—*Right to sue on behalf of trust.*

on himself e may sub- *to* trustee as action. His ongdoer. A ustee *de son tort*. He has no right to maintain suit on behalf of the trust even if the suit is taken to have been instituted for the benefit of the trust (*Venkatasubba Rao and Abdur Rahman, JJ.*) VEDAKANNU NADAR *v.* RANGANATHA MUDALIAR. 1938 M.W N. 983=48 L W 829= A.I.R 1938 Mad. 982=(1938) 2 M L J. 663.

——*Trustee—Power to set up adverse title.*

Per *Vivian Bose, J.*—No person who has accepted the position of trustee or of *quasi* trustee and has acquired property in that capacity can be permitted to assert an adverse title on his own behalf until he has obtained a proper discharge from the trust with which he has clothed himself. (*Stone, C J, Bose and Digby, JJ.*) ASARAM *v.* LUDHESHWAR. 177 I C. 6= 11 R N. 109=A I R. 1938 Nag 335 (F.B.)

——*Trustee—Powers of—Permanent lease of waste lands—Validity—Presumption as to validity of ancient transactions — Applicability—Discretion of Court—Considerations.*

Courts have a discretion in drawing presumptions as to the propriety of transactions which took place many years ago, even when that transaction is a permanent lease by a trustee of waste lands belonging to the trust. iot with reference to elapsed before the nce to the death of information as to the circumstances under which the transaction took

trust can in no circumstances be granted. (*Varadachariar, J*) NELLAYAPPAR KANTHIMATHI AMBAL TEMPLE, TINNEVELLY *v.* ARUNACHALAM PILLAI. 1937 M.W.N. 1188.

——*Trustee — Special trustee—Who is—Religious endowment—Gift to temple—Properties conveyed to person described by donor as trustee—Status of.*

It is only in a case where there are other persons in

properties in any character except that of the trustee of the temple. (*Varadachariar and King, JJ.*) SUBBA REDDI *v.* CHENGALRAYA REDDI A.I.R. 1938 M

T. P. AMENDMENT ACT (1929), S. 63.

10 R.O. 264=1938 O W N. 401=1938 O A. 270= A.I.R. 1938 Oudh 127 (F.B.).

——S. 63 (d)—Construction and Scope— "Proceedings, etc., pending on 1—4—1930"—Insolvency proceedings started before 1—4—1930—Claim to priority by secured creditor raised subsequently—If pending on 1—4—1930. *See* TRANSFER OF PROPERTY ACT (AS AMENDED IN 1929), S. 92.

TREASURE TROVE ACT (VI [illegible]

Offence under—Abetment of—Person [illegible] *ing of treasure but afterwards shares* [illegible] *—If guilty.*

A person who was not present [illegible] treasure and who has had no sort of connection with the matter up to the time when the actual finder decides not to report to the Collector about the finding cannot be found guilty of the offence of abetment of an offence [illegible]

when it changes hands. When the money is deposited in a bank it becomes a part of the assets of the bank [illegible]

[illegible] 47 L W. 813=A.I R. 1938 Ma[illegible] (1938) 1 M I [illegible]

TRUST—*Appointment of trustee—Appointm*[illegible] *himself as trustee by person having right of* [illegible]*ment—Legality.*

The appointment of himself as trustee by a person having the right of appointment is not *per se* illegal (*Panckridge, J.*) PURAN CHAND *v.* ADVOCATE GENERAL OF BENGAL. 42 C.W N. 201.

——*Creation of—Essentials—Charitable endowment by a Hindu in Punjab.*

For the foundation of a charitable endowment by a Hindu in the Punjab, no writing is required. What is necessary is that the purpose be clearly specified and that the property intended for the endowment should be set apart as dedicated to that purpose. It is necessary that the donor should divest hims[illegible] perty. The evidence of divestiture ma[illegible] raneous in such a case the subsequent [illegible] of the donor are irrelevant and cann[illegible] (*Lord Thankerton.*) SUNDER SINGH *v.* SUNDER SINGH. 65 I A. 106=172 I.C. 993=47 L W. 239= I.L R. 1938 Lah. 63=32 S.L R 350=

TRUST.

1938 A.L J. 194=1938 O.W.N. 245= 1938 O.L.R. 104=1938 A L R. 138= 1938 A.W.R. (P.C) 74=40 P L.R. 247= 4 B R. 317=66 C.L J. 524=10 R P C. 202= 1938 O.A. 371=42 C.W.N. 933=1938 M.W.N. 621= 1938 P.W.N. 548=40 Bom L R. 724= A.I.R. 1938 P.C. 73=(1938) 1 M L J. 359 (P.C.).

[illegible] by means of an *ikrarnama* undertook among other things to pay a certain sum to his illegitimate brothers and to put them in possession of certain property on their attaining majority, it was held that the two [illegible]

——*Public or private—Criterion — Intention of founder as gathered from circumstances.*

[illegible]

——*Suit on behalf of — Right to maintain— Public charitable or religious trust created by Hindu under will—Appointment of son as trustee for life and after him his sons—Son guilty of misconduct and breach of trust and leaving British India—Suit by grandsons for possession and mesne profits of trust properties illegally alienated by their father—Maintainability—Proper remedy.*

Persons who are not the present trustees are not entitled to maintain in that capacity a suit on behalf of the trust for possession of immovable properties of the trust or for mesne profits. Where under a will execut-[illegible]

[illegible] father's lifetime maintain a suit for possession of trust properties. The fact that their father has been guilty of misconduct and breach of trust and has alienated the

brothers were, on their own showing, guardians of the plaintiff.

Held, that the three brothers were in the position of trustees and were liable to account to the plaintiff for her half share in the profits arising out of the business and not merely to a half-share in the properties and in the profits as on the date of her father's death, the fact that they were co-owners of the estate of the deceased would not their liability as guardians. (*Leach, C J. and Abdur Rahman, J*) KATHOOM BI *v.* ABDUL WAHAB S...

... who have not been impleaded in the suit. Consequently, if the tenure is put up for sale in execution of the decree obtained against him and is purchased *benami* for him, the purchase does not inure to the benefit of the non impleaded tenants. (*Khundkar, J.*) NARENDRA NATH ACHARJEE *v* HIRENDRA NATH ACHARJEE.

I.L.R. (1938) 2 Cal. 266 = 42 C.W.N. 701 = A.I.R. 1938 Cal 500

——**Ss. 88 and 90**—*Scope and effect of—Partnership—Leasehold property—Renewal of lease by one partner—Right of co-partners to benefit of—Presumption.*

The Indian Legislature has nowhere indicated an intention to enact an absolute rule of law or an irrebuttable presumption in respect of renewals of leases obtained by one co-partner. There is no warrant for holding that in no case can a partner during continuance of a partnership contract for a new lease to be granted to himself, of property which is in lease to the partner-

...trations (a) and (c) to S. 88 refer only to cases where the partner uses funds belonging to the partnership or clandestinely stipulates for a personal benefit in a ...

... and Horwill, JJ.) RAMALINGA REDDI *v* RAMALINGAM SETTY. **48 L.W. 334 = 1938 M.W.N 854 = A.I.R. 1938 Mad 929 = (1938) 2 M.L.J. 790.**

——**S 90**—*Scope—Claim to benefit of—Burden of proof—Lands held by individu... under grant by Government—S... with full occupancy rights—R... benefit of grant.*

S. 90 of the Trusts Act is base... no person who is in a fiduciary ...

make a profit out of that position to the detriment of persons who are actually interested with himself in the property held by them all In other words, a person who is a limited owner by reason of his position must not utilise that position to obtain an advantage to the detriment of his co owners. It is not necessary that the other persons should make out that the advantage was obtained fraudulently or by misrepresentation or by suppression of the true facts. All that the section says is that if there is a person in a fiduciary relation to an-

... of the Trusts Act, unless upon proof that the property belonged to the family as a whole when the lease with full occupancy was granted. (*Rangnekar, J.*) DATTATRAYA SITARAM *v.* SHANKAR. **175 I.C. 434 = 10 R.B. 569 = 40 Bom L.R. 118 = A.I.R. 1938 Bom 250.**

——**S. 90, Ill. (b)**—Applicability—Fiduciary capacity—Grant of Sheri land by Government to member of Hindu joint family—Grantee named in patta individually—Subsequent enlargement of tenure by grant of full occupancy rights to heirs—Benefit of grant—Right of joint family to claim. *See* HINDU LAW—JOINT FAMILY. **40 Bom L.R. 118.**

TRUSTEES AND MORTGAGEES POWERS ACT (XXVIII OF 1866), S. 12—*English mortgage—Receiver appointed under power contained in—Accountability to mortgagor.*

The general rule that an agent is accountable to his ...

... analogy can be drawn from the law of principal and agent. It is the mortgagee who appoints the receiver and without reference to the mortgagor if so provided ... the receiver ... that he is ... it is possible ... receiver has ... mortgagee's ...

A.I.R. 1938 Cal. 507.

U. P. AGRICULTURISTS' RELIEF ACT (XXVII OF 1934),—*Construction—Duty of Court to have regard* ...

U. P. AGRI. REL. ACT (1934).

ter and Bajpai, JJ.) CHUNNI LAL *v.* AJUDHIYA PRASAD. 173 I.C. 646 = 10 R A. 487 = 1938 A L R 153 = 1937 A W R 1173 = 1937 A L J. 1235 = 1938 R.D. 104 = A.I R ...

...

TAQI HUSAIN. 175 I.C. 161 = 1938 O.L.R. 271 = 1938 R.D. 584 = 1938 A.W.R. (C C.) 64 = 11 R.O. 1 = 1938 O.A. 466 = 1938 O.W.N. 573 = A.I.R 1938 Oudh 184.

——*Scope—If derogate from O. 20, R. 11, C. P. Code.*

Under this act it is imperative on the Court to pass an instalment decree in certain circumstances. The act does not derogate from O 20, R. 11, C. P. Code. Under which Court is entitled to pass an instalment decree (*Allsop, J.*) GIRWAR SINGH *v.* HAR PRASAD
173 I C 897 = 10 R A. 518 = 1937 A W R. 1074 = 1937 A.L J. 1247 = 1938 R D 65 = 1938 A.L R. 189 = A.I R. 1938 A 52

...

revenue on house sites

Where the revenue paid by a person was on account of house sites and not on account of 'land' as defined in the Tenancy Act, the revenue payable by such a person is not 'land' revenue' within the meaning of S 2 (2) (*a*) of the Agriculturists' Relief Act, and hence he is not an 'Agriculturist' as defined in the Act. (*Iqbal Ahmad, J*) RODA RAM *v.* MUKAND LAL.
I L.R 1938 All 384 = 1938 R D. 295 = 174 I C. 921 (1) = 10 R A. 637 = 1938 A.L R. 358 = 1938 A.W R. 132 (H C

——S 2 (2) (f) and Expl. ...
family paying rent of less than ... annum.

Where a tenancy is held by a joint Hindu family, S. 2 (2) (*f*) applies to the case, and the whole family which pays the rent of the agricultural land not excee-

...

case of a joint family where the total rent is more than Rs. 500 per annum, and then the different members may ...

1938 A L R 202 = 173 I.C
1938 A.W R. 26 (H C)

——S. 2 (2) (f), Expls. 2 an...
Joint Hindu family paying ann... respect of holding—If "Agriculturist"—Right to instalments.

U. P. AGRI. REL. ACT (1934), S. 2.

Explanation 2 of S. 2 (2) of the U. P. Agriculturists' Relief Act does not apply to Ch. II, S. 3 of the Act; it is not necessary to resort to that Explanation in the case of a joint Hindu family which holds an agricultural ... annum. A ... exceeding ... as word ... nt family. Such a family is entitled to instalments under S. 3 of the Act. (*Bennet, J.*) KEDAR PRASAD *v.* SURAJ NARAIN SINHA. 174 I C 66 = 1938 R.D. 145 = 1938 A.L R. 216 = 10 R.A 544 = 1938 A.W.R. 25 (H.C.) = 1937 A.L J. 1367 = A I R. 1938 All. 128.

——**S 2 (2) Prov 1 and 2**—*Agriculturist—Who is—Payment of income-tax by Agriculturist—If removes him from the class of Agriculturists.*

Apart from S. 2 (2) (*a*), the first proviso to the Section lays down that for the purpose of certain Sections and Chapters of the Act including Chapter V, an agriculturist means also a person who would belong to a class of persons mentioned in parts (*a*) to (*g*) of this Sub section, if the limits of land revenue, local rates, rent and area mentioned in these parts were omitted A person who is an agriculturist by virtue of this ... the ... to- ... tely ... in ... the ... ble ... ows ... of ... so. ... JA.

1938 O W N. 836 = 1938 R D 738 = 177 I C 362 = 11 R O 42 = 1938 O L.R 409 = 1938 A W R. (C C.) 81 = 1938 O A 631 = A I R. 1938 Oudh 208.

——**S. 2 (2), Provs. 1 and 2**—*Interpretation—Persons mentioned in Prov 1 if subject to rule contained in Prov. 2*

A person who is an agriculturist by virtue of the first proviso to S 2 (2) of the United Provinces Agriculturists' Relief Act is as much subject to the rule contained ... turist under S. 2 (*Thomas, C. J.*, ... SHEO RATAN ... FYZABAD.
177 I C 962 = 1938 R D. 810 = 1938 O L R. 454 = 1938 A W R. (C C.) 122 (2) = 1938 O A. 768 = 1938 O.W N. 1001 = A I R. 1938 Oudh 234 (F B).

——**S. 2 (2). Expl II**—*Scope and effect of—Hindu ... members—If agriculturists— ... 5 and 30—Karta of joint ... turist—Subsequent application ... mily—Competency*

Though under Expl. II to S. 2 (2) of the Agriculturists' Relief Act each member of a joint Hindu family or each joint owner or joint tenant may for certain purposes apply for certain benefits conferred by the Act, it is equally clear that each member of a joint family or joint owner or joint tenant cannot claim the ... S. 30 of the Act, ... ns S. 30 are ex- ... Each member of ... as an agriculturist ... proceedings for redemption of mortgages under Ch. III, proceedings under Ss. 37 and 36, etc. But in other cases than those

U. P. AGRI. REL. ACT (1934), S 2

expressly covered by the Explanation it is karta of the joint family or the person actually as holding the property or paying the revenue t be treated as the agriculturist, and the other in members cannot claim the same benefits and p For the purposes of an application under S. IV, therefore, the karta of a joint Hindu family normally the person recorded as owner or person paying revenue, etc., is the only person who can apply and who can be regarded as an agriculturist If he is found to be not an agriculturist, that concludes the matter and the other members of the family cannot avail themselves of Expl II to S. 2 (2) and apply under Ss. 5 and 30. (*Sulaiman, C J and Harries, J*) ALLAHABAD BANK, LTD., MEERUT *v.* PRAKASH NATH.

I.L.R. 1938 All 19=172 I C. 951=10 R A 444= 1938 A L.R. 52=1937 A L J 970= 1937 A W.R. 890=1937 R D 534= A I R 1938 All 12

——Ss 2 (8) and 30 (4)—*Interest—What is included in—Thika money to be paid by mortgagor lessee—If*

is undoubtedly to be dealt with according to the provisions of S 30 (4) of the Act. The word 'otherwise' in S 2 (8) makes the provision cover what is called 'rent' in *C. J and Zia ul-Hasan.*

According to the definition of a mortgage in the T P. Act, the essence of the transaction is a loan and

Agriculturists' Relief Act Three exceptions being 'loans' under the Act A usufructuary mo not one of them Mortgage money advanced case is clearly within the definition of 'loan'

1938 R D 782=1938 A L J. 872= A I R. 1938 All 564.

——Ss 2 (10)(a) and 5—*'Any decree for money' in S. 5—Construction—If includes decree for recovery of price paid and damages*

Where a person obtained a decree for the money paid

U. P AGRI REL ACT (1934), S. 4

be secured—Security found to be void—Loan, if unsecured.

A loan that purports to be a secured loan cannot be regarded as such for the purposes of Schedule III of the Agriculturists' Relief Act, if the security given is afterwards found to be void and unenforceable, and such a loan must be regarded as unsecured. (*Zia ul-Hasan and Smith, JJ.*) GOVIND PERSHAD *v.* SURENDRA NATH 1938 R D 293= 1938 A.W R. (C.C.) 11=1938 O A. 167= 1938 O.W N. 220.

——S. 3 (1), Provisos 1 and 2—*Scope—Power of Court under—Mortgagor agriculturist—Instalments spread over period exceeding four years—Legality—*

the Court to contrary to the *s. (Harries and* SUBEDAR RUP SINGH. 172 I C. 991=10 R A 452= 1938 A L R 75=1938 R D 90=1937 A L.J. 1291= 1937 A W R. 1075=A I.R. 1938 All. 26.

interference in appeal. idered the question of

Smith, JJ) GOVIND PERSHAD *v.* SURENDRA NATH. 1938 R D 293=1938 O.A. 167= 1938 A W R (C C.) 11=1938 O.W.N. 220.

directing payment of decree in ...ult—If and when the whole

directed to pay the ince it is more than six, riculturists' Relief Act, at liberty to take out there has been default in ion does not say whether otherwise—and that then due would become realiz*pat, JJ*) GURCHARAN 1938 A L J. 991= 1938 A.W R. (H C.) 700=1938 R D 844.

——S 4—*If applies to decrees passed prior to the Act.*

The expression 'or in any order for grant of instalments passed against an agriculturist' occurring in S. 4 of the Agriculturists' Relief Act, is wide enough to cover ed in respect to a decree Act. When S. 3 is made ntention of the Legislature hould automatically whether passed

U. P. AGRI. REL. ACT (1934).

ter and Bajpai, JJ.) CHUNNI LAL *v.* AJUDHIYA PRASAD. 173 I.C. 646=10 R A. 487= 1938 A L R. 153=1937 A W R 1173= 1937 A L J. 1235=19: A I R

——*Costs of original decree—Reductio.*

The Agriculturists' Relief Act does Court to make any deduction in the amount of costs allowed under the original decree (*Thomas C J and*

A I.R 1938 Oudh 184.

——*Scope—If derogate from O. 20, R. 11, C. P. Code.*

Under this act it is imperative on the Court to pass an instalment decree in certain circumstances. The act does not derogate from O. 20, R. 11, C. P. Code. Under which Court is entitled to pass an instalment decree. (*Allsop, J.*) GIRWAR SINGH *v.* HAR PRASAD.

173 I C 897=10 R A. 518=1937 A W.R. 1074= 1937 A.L J. 1247=1938 R D. 65=1938 A L R. 189= A I R. 1938 A. 52

MAD TAQI HUSAIN 175 I C 1938 R D. 584=1938 A.W. 1938 O.A.

——S. 2 (2) (a)—*Agr revenue on house sites.*

Where the revenue paid by a person was on account of house sites and not on account of 'land' as defined in the Tenancy Act, the revenue payable by such a person is not 'land' revenue' within the meaning of S. 2 (2) (*a*) of the Agriculturists' Relief Act, and hence he is not an 'Agriculturist' as defined in the Act. (*Iqbal Ahmad, J*) RODA RAM *v.* MUKAND LAL.

I L R. 1938 All 384=1938 R.D 295= 174 I C. 921 (1)=10 R A. 637=1938 A L R. 358= 1938 A W R 132 (H C)=1938 A L J 135=

——S 2 (2) (f) and Expl.

family paying rent of less tha annum

Where a tenancy is held by S. 2 (2) (*f*) applies to the case,

claim under Explanation 2 that their share is less than Rs. 500, and that they would be agriculturists. (*Bennet, J*) SURAJ NARAIN SINHA *v* KEDAR PRASAD.

I L R. 1938 All 1938 A L R 202=173 I. 1938 A.W R. 26 (H.C

——S. 2 (2) (f), Expls 2 a

Joint Hindu family paying an respect of holding—If "Agriculturist"—Right to instalments.

U. P AGRI. REL. ACT (1934), S. 2.

Explanation 2 of S. 2 (2) of the U. P. Agriculturists' Relief Act does not apply to Ch. II, S. 3 of the Act; it is not necessary to resort to that Explanation in the case agricultural annum. A exceeding as word person' in that clause includes a Hindu joint family. Such a family is entitled to instalments under S. 3 of the *J.*) KEDAR PRASAD *v.* SURAJ NARAIN.

174 I C 66=1938 R.D. 145= 1938 A.L R 216=10 R.A 544= A.W.R. 25 (H C.)=1937 A.L J. 1367= A I.R. 1938 All. 128.

——S 2 (2) Prov. 1 and 2—*Agriculturist—Who is—Payment of income-tax by Agriculturist—If removes him from the class of Agriculturists.*

Apart from S. 2 (2) (*a*), the first proviso to the Section lays down that for the purpose of certain Sections and Chapters of the Act including Chapter V, an agriculturist means also a person who would belong to a class of persons mentioned in parts (*a*) to (*g*) of this Sub section, if the limits of land revenue, local rates, rent and area mentioned in these parts were omitted A person who is an agriculturist by virtue of this s not cease to be an agriculturist by the ncome-tax by reason of second proviso to s not the payment of Income tax absolutely away the effect of the first proviso but in person belonging to cl (*a*), only when the ayable shows ve of oviso. RAJA

1938 O.W N. 836=1938 R D. 738= 177 I C 362=11 R O 42=1938 O L.R. 409= 1938 A.W R. (C C.) 81=1938 O A 631= A I R. 1938 Oudh 208.

——S 2 (2), Provs 1 and 2—*Interpretation—Persons mentioned in Prov 1 if subject to rule contained in Prov. 2*

A person who is an agriculturist by virtue of the first proviso to S 2 (2) of the United Provinces Agriculturists' Relief Act is as much subject to the rule contained

and effect of—Hindu rs—If agriculturists— 30—Karta of joint Subsequent application Competency.

o S. 2 (2) of the mber of a joint Hindu family or each joint owner or joint tenant may for certain purposes apply for certain benefits conferred by the Act, it is equally clear that each member of a joint cannot claim the S 30 of the Act, ins S. 30 are ex- . Each member of as an agriculturist proceedings for redemption of mortgages under Ch. III, proceedings under Ss. 37 and 38, etc. But in other cases than those

expressly covered by the Explanation it is only the karta of the joint family or the person actually recorded as holding the property or paying the revenue that can be treated as the agriculturist, and the other individual members cannot claim the same benefits and privileges. For the purposes of an application under S. 5 or Ch. IV, therefore, the karta of a joint Hindu family, who is normally the person recorded as owner or person paying revenue, etc., is the only person who can apply and who

I.L.R. 1938 All 19=172 I C. 951=10 R A 444=
1938 A.L.R. 52=1937 A L J. 970=
1937 A W.R. 890=1937 R D 534=
A.I.R. 1938 All 12

——**Ss. 2 (8) and 30 (4)**—*Interest—What is includ. ed in—Theka money to be paid by mortgagor lessee—If*

or in the form of service or otherwise. ... cases in favour ... 'rent' only by ... the 'rent' is no

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1938 O W.N. 535=A I.R. 1938 Oudh 156.

——**S 2 (10) (a)**—*Loan—If includes money advanced on usufructuary mortgage.*

According to the definition of a mortgage in the T. P. Act, the essence of the transaction is a loan and

Agriculturists' Relief Act. Th... being 'loans' under the Act. A u... not one of them Mortgage mo... case is clearly within the defini... Act. A person borrowing a loa... tuary mortgage in lieu thereof, ... gagee, and incurs a 'debt' and is a ... gagee. (*Bennet* ... MAKHAN LAL.

1938 A.]

——**Ss 2 (10) (a) and 5**—*'Any decree for money' in S. 5—Construction—If includes decree for recovery of price paid and da...*

Where a person obt... for supply of goods a... tract to supply them, ... tled to apply under S. 5 of the U. P. Agriculturists Relief Act, for converting such a decree into one for instalments. The amount paid by the plaintiff is not a

'loan' within the meaning of S. 2 (10) (*a*) of the Act and the damages decreed could not be deemed to be a decree based upon a loan or upon a transaction which is in substance a loan. (*Mulla, J*) NARAIN DAS *v.* RADHA KUAR. 1938 A W R (H C) 770=
1938 R.D 879=1938 A L J 1063.

——**S 2 (10) (b) and Sch. III**—*Loan purporting to be secured—Security found to be void—Loan, if unsecured.*

... SURENDRA NATH. 1938 R D 293=
1938 A.W.R. (C C.) 11=1938 O A 167=
1938 O W N. 220.

——**S. 3 (1), Provisos 1 and 2**—*Scope—Power of Court under—Mortgagor agriculturist—Instalments spread over period exceeding four years—Legality—... small pension—*

... ist to whom Ch. ... and spread over ... e Court has no ... nstalments to be spread over a period exceeding four years. The fact that the judgment debtor happens to be a military officer with a small pension does not entitle the Court to

interfere in appeal, but where there is no indication in the judgment that this point was considered in the Court below, the position is different. (*Zia ul-Hasan and Smith, JJ*) GOVIND PERSHAD *v.* SURENDRA NATH.
1938 R D 293=1938 O.A. 167=
1938 A W.R (C C.) 11=1938 O.W.N. 220.

—*Order directing payment of decree in ... and when the whole*

... directed to pay the ... ince it is more than ... riculturists' Relief Act, ... at liberty to take out ... has been default ... does not say whether ... herwise—and that the ... due would become ... *ipat, JJ*) GURCHA... 1938 A L J, ...
H C.) 700=1938 R D ...
decrees passed prior to ...

Act.

The expression 'or in any order for grant of ...

... that the provisions of S. 4 should ... into operation where a decree,

... the Act is converted into a decree or order for

was secured by ...
and further the parties entered into an agreement whereby the cultivator agreed to sell his sugarcane so as to ensure that the lender would obtain repayment of the money advanced to him it was held that in effect the agreement to sell the sugarcane crop was security given to the lender for the money which he had advanced and

... and Rachhpal Singh JJ.*) HAR PRASAD *v.* SEWA. I.L.R. 1938 All 727=1938 A W.R (H C) 486= 1938 O W N. 753=1938 R D 680=
177 I ...
1938 A ...

——S 5—
U. P. AGRICI...
AND 5

——S 5— ...

1938 A L R 695=11 R A 160= 1938 A L J. 694=A I R. 1938 All. 461 (F B)

——S 5 (1)—*"Any decree for money"—Meaning of—Interpretation of statutes—Plain meaning.*

It is one of the recognized canons of interpretation of

... decree for money" used i... passed with respect to a... cannot apply to a de... malicious prosecution. *Rachhpal Singh JJ*) I L R. 19... 1938 O W N. 763=176 I C 943=1938 A L R. 690= 11 R A. 153=1938 A.L J. 628= 1938 A W.R (H C) 437= A.I R. 1938 All 456 (F.B)

——S. 5—*Applicability—Decree on compromise providing for its satisfaction by judgment-debtor executing sale-deed.*

S. 5 of the Agriculturists' Relief Act is meant to apply

Hasan, J.) RAGHURAJ SINGH *v.* LALA HARI KISHAN LAL. 173 I C. 865=10 R O 231= 1938 O.L R. 143=1938 R D. 405 (2)= 1938 O A 231=1938 A W.R (C C.) 26= 1938 O.W.N. 331=A.I.R. 1938 Oudh 107.

——S. 5—*Application under—Subsequent application ... y of sale—Rejection—Appeal ... High Court to interfere in*

... der S. 5 of the Agriculturists' ... the judgment debtor applies ... stay of the sale in execution, ... the application for stay, no ... rder. But the High Court ... ter in the exercise of its revisional jurisdiction. (*Niamatullah and Allsop, JJ.*) SHYAM LAL *v* RAM GOPAL. I L.R 1938 All. 48= 172 I C 784=1938 R. D. 87=1938 A L R 39=

... f, the judgment- ... ulturists' Relief ... on of the decree ..., the mortgage ... ceases to exist. ... a fresh decree ... alone is capable ... der S 5, the sale held in pursuance of the original decree must be set aside (*Ismail, J.*) ZAMIN ALI *v.* PARSHOTAM CHANDRA. 1938 A L J 575=1938 R D 588= 1938 A W R. (H.C.) 407.

——S. 5—*Discretion of Court.*

The Court has discretion in certain cases not to apply

... LAL. 1938 O A 231=1938 A.W R. (C C) 26= 173 I C. 865=1938 O L R. 143=1938 R D 405 (2)= 10 R.O. 231=1938 O W.N 331= A I R. 1938 Oudh 107.

... on being ... r of the ... 5 of the ... *Zia ul-* ... KISHAN LAL. 173 I C 865=1938 O L R 143= 1938 R D. 405 (2)=10 R O 231=1938 O A. 231= 1938 A.W.R. (C C) 26=1938 O W N. 331= A I R 1938 Oudh 107.

——Ss. 5 and 30—Right to apply under—Hindu joint family—Individual member of—Application by—Competency. *See* U. P. AGRICULTURISTS' RELIEF

ACT, S. 2 (2), EXPL. II. 1937 A.W R. 890=A.I R. 1938 All. 12.

——S. 5—*Successive applications under—Maintainability.*

A second application under S. 5 of the Agriculturists' Relief Act asking the Court which has already passed an instalment decree to vary its own decree is incompe

DAR RUP SINGH. 172 I.C. 991=193 1938 A L R 75=10 R A. 452=1937 A. 1937 A W.R. 1035=A I.R. 1

——S 5 (1)—*Court that passed decree—*

The interpretation of ' Court which passed a decree in S. 37, C. P. Code, cannot be put on the words 'the

instance that decided the suit may have been transferred and not the Court which may have passed either in appeal or in revision the ultimate decree in the cause

——S. 5 (2)—*Order under—Power of High Court to revise*

Court. The provision in Cl. (2) of S 5 that "the decision of the appellate Court shall be final" means no more than this

Small Causes being subordinate to the District Court, an appeal from the Court of Small Causes under S. 5 (2) of

the Act lies to the District Court and not to the High Court. (*Niamatullah and Allsop, JJ*) KEDAR NATH *v.* SHIAM LAL I L R. 1938 All. 94=1938 R D. 72=172 I.C. 896=1938 A L R 43 (2)=10 R A 432=1937 A.W R. 1079=1937 A L J 1094=A.I.R 1938 All 48.

——S 6—*S. 6 does not interfere with any substantive*

I L R. 1938 All. 697=177 I C 267=1938 A L R 734=11 R A. 184=1938 R D. 706=1938 A L J 724=A I R 1938 All 502.

—S. 6—' *Decree" and "first application for execution"—Meaning of.*

he word 'decree' appearing in S. 6 applies both to ee passed prior to the commencement of the Act and after it and the words first application for execution' occurring in the same section also apply to 'first application for execution' made before or after the commencement *Bajpai, JJ.*) KALYAN

l. 697=177 I.C. 267=184=1938 R D. 706=45=1938 A L J 724=A I R. 1938 All. 502.

——S. 7—*Applicability—Suit instituted prior to Act tency*

Act applies g into force into force date of the ied only in a ants reside, is the Court in as instituted *ollister and* PRASAD. L R 153=10 R A 487=1937 A W R 1173=1937 A L J. 1235=A.I.R. 1938 All 63.

——S 7—*Intention and object of—Section of retro-*

Act—Provision for automatic total discharge *a period—Application under S. 12 after*

U. P. AGRI. REL. ACT (1934), S. 23.

fixed—Deposit, if necessary—Redemption, if can be ordered.

Where an usufructuary mortgage executed prior to the passing of the Agriculturists Relief Act, provided for its automatic total discharge within a period, the mortgagor can apply under S. 12 of the Act, after the period fixed, for redemptions. No deposit need be made, if no balance is due. S. 12 is intended to be a residuary to S. 11 and to embrace all mortgages by an agriculturist not dealt with in S. 11. S. 27 of the Act makes the C. P. Code, applicable and hence O. 34, Rr. 7 & 9 would apply to the above case and where on taking an account the Court finds that nothing is due from the applicant, the Court will pass a decree for possession in his favour, and may award him any amount found due to him. (*Bennet and Verma, JJ.*) IQAN HUSAIN v. SAHU BABU RAM. 1938 A.W.R. (H C) 792= 1938 A.L.J. 1115=1938 R.D. 924.

——S. 23—*Appeal under—Court-fee payable—Court Fees Act, Sch. I, Art. 1 and Sch. II, Art. 11*—Ad valorem fee—*If payable.*

An appeal under S. 23 of the Agriculturists' Relief Act is not an appeal falling under Art. 11 of Sch. II of the Court Fees Act, but falls under Art. 1 of Sch. I, and therefore *ad valorem* Court-fee must be paid on the amount of the subject-matter in dispute. (*Niamatullah and Allsop, JJ.*) ANAND GIR v. RAM NAZAR CHOUBE. I.L.R. (1937) All. 949= 1937 R.D 575=10 R.A. 456=1938 A.L.R. 70= 173 I.C. 50=1937 A.L.J. 1178=1937 A.W.R. 932= A.I.R. 1938 All. 14.

——S. 23—*Scope—Order refusing instalments under S. 3—Appeal.*

The U. P. Agriculturists' Relief Act does not provide for any appeal from a refusal to grant instalments under Sec. 3 of the Act. The appeal provision in Sec. 23 is only for Chapter III and not for Ch. II. (*Bennet, J.*) SURAJ NARAIN SINHA v. KEDAR PRASAD. 1937 A.L.J. 1345=1938 A.W.R. 26 (H.C.)= I.L.R. (1938) All. 234=1938 R.D. 146= 1938 A.L.R. 202=173 I.C. 920=10 R.A. 523= A.I.R. 1938 All. 119.

——Ss. 30 and 33 (1)—*Applicability to mortgages—Usufructuary mortgage—Right of mortgagor to apply for account.*

S. 33 (1) is applicable even to a mortgagor who has executed a usufructuary mortgage. The section applies to every agriculturist debtor, no matter whether the debt is due by him under a promissory note, simple bond or mortgage deed, whether the mortgage be a simple, usufructuary or conditional mortgage. S. 30 does apply to mortgages. A mortgagor who has executed a usufructuary mortgage is therefore entitled to apply for an account under S. 33 (1). (*Sulaiman, C. J. and Harries, J.*) DHARAM SINGH v. BISHAN SARUP. I.L.R. (1938) All. 29=173 I.C. 676= 1938 A.L.R. 151=10 R.A. 497= 1937 A.W.R. 892=1937 R.D. 536= A.I.R. 1938 All. 1.

——S. 30—*Applicability—Renewed promissory note—Reopening of old debt, if permissible.*

The taking of renewed bill or promissory note for a debt does not amount to a payment of the old debt. S. 30 of the Agriculturists' Relief Act is wide enough to cover the case of an old debt renewed subsequently. (*Thomas, C.J. and Zia-ul-Hasan, J.*) VYAS v. RAJA BARKHANDI MAHESH PRATAP NARAIN SINGH. 173 I.C. 882=11 R.O. 32=1938 O.L.R. 409= 1938 O.W.N. 836=1938 R.D. 788=

U. P. AGRI. REL. ACT (1934), S. 30.

1938 A.W.R. (C.C.) 81=1938 O.A. 631= A.I.R. 1938 Oudh 208.

——S. 30—Application under—If competent, after an order under S. 6 of Encumbered Estates Act. *See* U. P. ENCUMBERED ESTATES ACT, S. 7 (*a*) *and* (*b*). 1938 A.W.R. (H.C.) 324.

——S. 30 and Sch. III and S. 4—*Future interest on decrees prior to Act—Provision governing.*

Future interest on decrees passed before the passing of the Agriculturists' Relief Act is governed by S. 30 and Sch. III of the Act and not by S. 4. (*Thomas, C. J. and Zia-ul-Hasan, J.*) DWARKA PRASAD v. MOHAMMAD TAQI HUSAIN. 175 I.C. 161= 1938 O.L.R. 271=1938 R.D. 584= 1938 A.W.R. (C.C.) 64=11 R.O. 1= 1938 O.A. 456=1938 O.W.N. 573= A.I.R. 1938 Oudh 154

——Ss. 30 and 33—*Redemption of usufructuary mortgage—Covenant as to no accounting—Account, if could be reopened—Debtor, if can obtain refund of excess of interest paid.*

Where a person applies under the Agriculturists Relief Act for the redemption of a usufructuary mortgage with a covenant that there would be no accounting and alleges that the entire amount has been paid off from out of the usufruct, the accounts could be reopened under S. 33 of the Act though it was a usufructuary mortgage. The opening words of S. 30 clearly imply that accounts can and must be reopened between the mortgagor and mortgagee in spite of the fact that they might have agreed that there shall be no accounting between them. But S. 30 (4) lays down that the debtor cannot claim refund of any part of the interest already paid. (*Misra, J.*) SHEO CHARAN LAL v. UMRAO BEGAM 178 I.C. 437=1938 A.L.R. 854= 1938 A.W.R. (H.C.) 619=1938 A.L.J. 892= 1938 R.D. 794=A.I.R. 1938 All. 611.

——S. 30 (1)—*Construction and scope—"Loan"—"Interest"—Meaning of—Mortgage—Renewal—Execution of fresh usufructuary mortgage with possession for amounts due under prior hypothecation bond—No fresh advance—If fresh advance of loan—Right of debtor to re-open.*

The words "loan" and "interest" occurring in S. 30 (1) of the Agriculturists' Relief Act must be understood as having the meanings given to them by the definitions of those words in S. 2, and it is only the principal amount actually advanced that is the "loan", and anything paid over and above that is "interest" no matter what form or shape it may take. The renewal of a mortgage deed by the execution of a fresh mortgage deed for the amounts due under the prior deed, without any fresh advance of money cannot be regarded as a fresh advance of a loan in cash or kind. Even if the new transaction is by way of a possessory mortgage under which the mortgagee takes possession undertaking to set-off the income against interest, if there is no fresh advance of money to the mortgagor, the transaction cannot be regarded as a fresh advance in kind by the mortgagee to the mortgagor. What the Court has to see is the actual amount advanced or lent and not what by some fiction might be imagined to have been indirectly advanced. The previous transaction cannot be deemed to have been closed by the execution of a fresh document, so as to preclude it from being re-opened under the Act. (*Sulaiman, C. J. and Harries, J.*) DHARAM SINGH v. BISHAN SARUP. 1937 A.W.R. 892= I.L.R. (1938) All. 29=173 I.C. 676= 10 R.A. 497=1938 A.L.R. 151= 1937 R.D. 536=A.I.R. 1938 All. 1.

——S. 30 (1)—*Scope and effect of—Order for instal-* ... *f can*

date as may be fixed ... Gazette in this behalf ... rates are prescribed w ... and these were thereafter ... accordance with rates which might be notified by Government under S. 4, subject to the provisions of note (*b*), but when once an order for instalments is passed, it appears to be the intention of the Legislature that the maximum rates should be those given in the various notifications under S. 4 of the Act, being no longer subject to note (*b*) to Sch. III. The fact that S. 30 (1) of the Act provides that the rate of interest shall not be ...

——S. ... *been passe* ... *claim.*

The wor ... ring in S. ... proper int ... date on which the debtor makes his app... S. 30 of the Act and can have no reference to the date of the decree. The benefit of S. 30 (2) can be claimed ...

gagor, if can apply under S. 3 ... *interest*—Res judicata.

Where in a mortgage suit the ... the plea of the interest being ex... at the later stages and an *ex parte* decree ...

... said that the order is without jurisdiction so as to justify

interference by the Board in revision when the decree-holder has not in any way been prejudiced Though the order is not technically in accordance with S 30 (2), ... will not be in- ... *Singh, JJ.*)

...938 R D 90= 10 R A 452= ... W R. 1035= A.I.R. 1938 All. 26

——S. 30 (4)—Applicability—Theka money to be paid by mortgagor lessee. *See* U. P. AGRICULTURISTS' RELIEF ACT, SS. 2 (8) AND 30 (4)

1938 O.A. 434

——S. 33—*Appeal by for reduction of amount adjudicated by trial Court in suit under—Proper court-fee.*

... amount ad- ... S. 33 to be ... fees should be ... s or has not ... 33 (2), on the

1938 A.L J. 708=1938 A.W R. (H C.) 443= A.I.R. 1938 All. 467.

... elief Act. The ... one Province ... de the terri- ... The mortgage ...

though the decree would not be in a suit under O. 34, C. P. Code. (*Thomas, C.J. and Zia-Ul-Hasan, J.*) RAM NARAIN *v.* CHANDRIKA PRASAD.

175 I.C. 50=1938 O.L.R. 259= 1938 O.W.N. 535=1938 O.A. 4 10 R.O. 307=1938 A.W.R. (C.C 1938 R.D. 567=A I.R. 1938 O

——S. 33—*Mortgage and lease back—Decision in suit by debtor under S. 33—If affects creditor's right to sue for lease money in Revenue Court.*

the debtor, mortgagee-creditor to recover the lease money by suit in the Revenue Court in the usual course, nor would mere decrees obtained by him therein be money 'realised' for purposes of the *J. and Zia Ul-Hasan, J.)* RAM N RIKA PRASAD. 175 I.C. 50=

1938 O.W.N. 535=1938 O.A. 434=
10 R.O. 307=1938 A.W.R. (C.C.) 54=
1938 R.D. 567=A.I.R. 1938 Oudh 156.

——S. 33—*Reopening of fully satisfied debts—Permissibility.*

The use of the expression 'debtor' in S. 33 of the Agriculturists' Relief Act indicates that the relation-

be reopened. As such a suit for the reopening of a closed transaction in respect of a bond is not permissible under S. 33 of the Act. (*Ismail, J.*) SUNDER LAL *v.* KAUSHI RAM. 1938 A.L.J. 976=
1938 A.W.R. (H.C.) 680=1938 R.D. 833

the time the loan was advance suit for accounts under the Agriculturists' Relief Act. LAL *v.* KAUSHI RAM.
1938 A.W.R. (H

——S. 33—*Suit under— defendant, if entitled to costs*

A suit by a mortgagor-debtor under S. 33 of the U.P. Agriculturist Relief Act for accounts cannot be regarded as a suit coming under O 34, C. P. Code, and as such the mortgagee-defendant is not entitled to costs and were ercised l for a garded consi- *ia-Ul-Hasan, J.)* RAM SAD.
175 I.C. 50=1938 O.L.R. 259=
1938 O.W.N. 535=1938 O.A. 434=
10 R.O. 307=1938 A.W.R. (C.C.) 54=
1938 R.D. 567=A.I.R. 1938 Oudh 156.

——S. 33—*Suit under—Valuation—Jurisdiction.*

under S. 33 of the U. P. Agriculturists' Relief

and the suit falls within the pecuniary jurisdiction of a Munsif's Court. The suit must therefore be instituted in that Court and not in the Court of the Civil Judge. (*Collister and Bajpai, JJ.*) BRIJ BEHARI LAL *v.* GOPI NATH. 173 I.C. 913=1938 R.D. 102=
1938 A.L.R. 200=10 R.A. 524=
1937 A.W.R. 1171=1937 A.L.J. 1224=
A.I.R. 1938 All. 76.

——S. 33 (1) and (2)—*Construction—Applicability to mortgages.*

Sub-S. (1) of S. 33 of the U. P. Agriculturists' Relief modified by Sub-S. own the substantive cribing the proce- e, if anything, it is sub-S. (2) that should be read subject to sub-S. (1) and not *vice versa*. There is nothing moreover,

RIKA PRASAD. 175 I.C. 50=1938 O.L.R. 259=
1938 O.W.N. 535=1938 O.A. 434=
10 R.O. 307=1938 A.W.R. (C.C.) 54=
1938 R.D. 567=A.I.R. 1938 Oudh 156.

UNITED PROVINCES COURT OF WARDS ACT (IV OF 1912)—*Collector in charge of Court of can make an acknowledgment on behalf of a*

ector in charge of the Court of Wards is the rised agent of the wards for the purpose of making an acknowledgment under S. 19 of the Limitation Act. (*Bennett, A.C.J., Rachhpal Singh and Ganga Nath, JJ.*) SHANKER LAL *v.* RANA LAL SINGH.
I.L.R. (1938) All. 363=175 I.C. 556=
10 R.A. 692=1938 A.L.R. 445=
1938 O.W.N. 318=1938 A.W.R. (H.C.) 153=
38 A.L.J. 252=A.I.R. 1938 All. 217 (F.B.).

. 19 (3) PROVISO—*Scope and effect—Failure of to discharge full amount within two years of*

urt of Deputy a debt, date on is not the in- partial payment is no discharge, and unless the full amount due is paid within the period of two years, the creditor is entitled to fall back on his original contract and enforce the terms thereof and recover the interest originally fixed. (*Sulaiman, C.J. and Harries, J.*) DEPUTY COMMISSIONER, PARTABGARH *v.* PURAN CHAND.
172 I.C. 881=1938 A.L.R. 40(2)=10 R.A. 431=
1937 A.L.J. 977=1937 A.W.R. 860=
A.I.R. 1938 All. 15.

——S. 55—*Applicability—Personal claim for damages in respect of a tort of the ward—Suit, if lies against Court of Wards—Ward, if a necessary party.*

Where a disqualified proprietor, received certain money as Honorary Assistant Collector and converted it to his own use, a suit for the recovery of such an amount is an action in tort and lies against the Court of Wards for damages. of Wards to such a MUZAFFAR-
6 I.C. 141=
1938 A.L.R. 569=
1938 A.W.R. (H.C.) 184=1938 A.L.J. 328=
A.I.R. 1938 All. 305.

UNITED PROVINCES DISTRICT BOARDS ACT (X OF 1922), S. 34—*Purchase by member of Board at auction—If acquires interest in a contract of the Board—Offence under S. 169, I. P. Code, if contemplated by section.*

U. P. DISTRICT BOARDS ACT (1922), S 71.

It is difficult to say that according to language of S 34 of the United Provinces District Boards Act, by purchasing property at an auction sale, the property being that of the Board, a member would be acquiring an interest in a contract of the Board If given a general interpretation, the words would mean that at any auction sale of the Board, no member can bid S 34 was never intended to S 169, I P. Code, at all and it refers only to S 168 (*Bennet, J*) SURAJ NARAIN CHAUBE *v* EMPEROR

I.L.R (1938) All [illegible]
11 R [illegible]
1938 A L.R [illegible]
1938 A W.R (H C) 45[illegible]

——S 71—*Dismissal of Secretary—Board's resolution as to, not carried by ⅔rds majo[illegible] of dismissal—Secretary if gets a caus[illegible] proceed against Board*

Where a Secretary was dismissed in [illegible] resolution of a District Board, which resolution was not carried by ⅔rds of the total number of members, as required by S 71 of the U P. District Boards Act, the dismissal is not a legal one and the failure to comply with the statutory requirements would furnish a cause of action to the Secretary to proceed against the Board. (*Harries and Rachhpal Singh, JJ*) PRABHULAL UPADHYA *v.* DISTRICT BOARD OF AGRA.

I L R (1938) All 252=175 I C. 875=
11 R A. [illegible]
1938 A W.R (H C.) 223= [illegible]

——S. 71—*Wrongful dism[illegible] Board—Malicious conduct of chairman or member—Liability for damages.*

Where the wrongful dismissal of a Secretary to a District Board was by the resolution of the Board itself, it is the Board that is liable for damages Neither any individual member nor the chairman is liable for damages, even though they might have acted maliciously to bring about the dismissal (*Harries and Rachhpal Singh, JJ*) PRABHU LAL UPADHYA *v.* DISTRICT BOARD OF AGRA. I.L.R. (1938) All. 252=
175 I.C. 875=11 R. A. 3=1938 A.L.R. 505=
1938 A.W.R. (H.C) 223=A.I R 1938 All. 276.

UNITED PROVINCES DISTRICT BOARD MANUAL, Ch. III, R 3—*Failure to comply with—If can give a cause of action to a dismissed servant.*

R 3 of Ch III of the U. P. District Board Manual, is [illegible]

[illegible]

AGRA. I L.R. (1938) All 252=175 I C. 875=
11 R A. 3=1938 A L.R. 505=
1938 A.W R. (H C) 223=A I R. 1938 All. 276

UNITED PROVINCES ENCUMBERED ESTATES ACT (XXV OF 1934)—*Rules framed under—R 6—Scope of.*

The scheme of the Encumbered Estates Act and the language of R 6 of the rules framed under the Act unmistakably lead to the conclusion that subject to certain limitations, the Civil Procedure Code has been made [illegible]

[illegible]

subsequent to Act coming into force—If can claim benefits.

The Encumbered Estates Act was not passed for the benefit of those who were not landlords on the date of the Act coming into force. Such persons cannot claim the protection of the Act, by a subsequent acquisition of landed property. (*Darling, S M. and Bomford, J M.*) SANT LAL *v.* ALLAHABAD BANK, LTD., JHANSI

1938 A W.R (B R.) 146=1938 R.D. 288.

——Ss 1 (2) and 7—*Exception in S. 1 (2)—Meaning and effect of—If excludes application of S. 7 to certain areas.*

The meaning of the exception laid down in sub-S. (2) [illegible] Estates Act is only [illegible] are situated within [illegible] any benefit from the [illegible] not, however, mean [illegible] conferred by the Act upon the landlord, and the disabilities which it has [illegible]

[illegible] of S 1 of the Act (*Mulla, J.*) BRIJ BEHARI LAL *v.* UDAI NATH SHAH. I L R (1938) All. 851=
178 I C 187=1938 R.D 768=1938 A.L R. 825=
1938 A.L J 832=1938 A W R (H C.) 551=
A.I.R. 1938 All. 586.

——S. 2 (g)—*Definition of landlord—Interpretation—Reference to other Acts—If necessary.*

The definition of landlord in the Encumbered Estates Act is perfectly clear and unambiguous. There is, [illegible] other Act to assist in [illegible] (*Darling, S.M. and* [illegible]) [illegible] NATH KAUL *v.* [illegible] SHUKLA.

1938 O.W N 35=1938 R D. 41=
1938 A.W.R (B R.) 24.

——S. 2 (g)—*Landlord—Holder of Muafi land in Lucknow city, not assessed to local rate—If can apply under the Act.*

Where in respect of a miscellaneous Muafi plot, situated in the city of Lucknow, no khewat was prepared, and which was not assessed to any local rate, the holder of such a plot is not a landlord within the meaning of S. 2 (*g*) of the U. P. Encumbered Estates Act, and as such cannot apply under the Act. (*Darling, S.M. and Mehta, J.M.*) MOHAMMAD QASIM ALI *v.* DURGA PRASAD. 1938 R.D. 861=1938 O.W.N. 1119

——S. 2 (g)—Landlord—Person whose name is not in the khewat, if a landlord. *See* U. P. ENCUMBERED [illegible] 4. 1938 A L J. (Supp.) 5.

[illegible] *d—Qualification—Requisites.*

[illegible] (*g*) of S. 2 of the Encumbered [illegible] qualification for a landlord is [illegible] um is assessed to a local rate which shall not be less than Re. 1 and it is wrong to think that the qualification is the payment of 1 Re. as local rate. (*Darling, S.M. and Bomford, J.M.*) RAM SARUP *v.* SANT BUX SINGH.

1938 A.W.R. (B R.) 176=1938 R.D. 334.

——Ss. 2 (g) and 4—*Landlord—Joint Hindu coparcenary paying more than one rupee cess in the under-proprietary khewat—Such co sharers, if can jointly apply under S.* 4

Where in an under-proprietary khewat, a co-parce[illegible]

[illegible] than a rupee. (*Darling, S. M and Mehta, J. M.*) MAHPAL SINGH *v.* RAMESHWAR SINGH.

1938 O W N. 1122=1938 A.W.R. (B R) 40
1938 R.D

——S. 4—*Amendment of applicat -nce of member disclosed, but he not later on sign.*

The Board can allow a member family, whose existence had been fu applicatior but who h. applicant, *Mehta, J.*

1938 O.WN 121:

——S. 4—Amendment—Applicat joinder of necessary parties—Concealment of existence of persons to be joined and specific assertion of non-existence of those persons—Amendment to add those persons—Permissibility. *See* C. P. C...

1938 R.D. 137=1938 A

——S. 4—*Amendment after allowed.*

An applicant under S. 4 of the U Estates Act could be allowed to amenc tion only where there was a genuine slip and there was an offer to correct it at the earliest opportunity. Where the existence of minor sons was not disclosed he was permitted to amend the application by their inclusion. (*Darling, S. M. and Bomford, J M.*) GIRWAR *v.* DANKU. 1938 A.W.R. (B R.) 168= 1938 R.D. 552.

——S. 4—*Amendment—Powers of special Judge to cause amendment in application under S 4.*

Where an appl bered Estates A Judge after an or no power to order adding parties. an amendment is the collector, who must be moved in the Board's powers of revision under S. 46. (*Darling, S.M. and Mehta, J.M.*) PARTAP *v.* RANJIT.

1938 R.D. 741=1938 A.W R. (B R.) 362=

——Ss *trict in wh as to zamin Judge—Le,*

Where a Estates Act which he fi close till a zamindar u cant had fi had no qua make a sec

wrongly describes his wife as a member of the joint family. (*Darling, S.M. and Bomford, J.M.*) JAGMOHAN NATH KAUL *v.* TARUNENDRA SHEKHAR

property of the applicant provided that the sale has not been confirmed. (*Darling, S.M. and Bomford, J M.*) KAILASH BEHARI LAL *v.* MOBTIDA KHAN.

1938 R.D. 196=1938 A.W R. (B R.) 123.

——S. 4—*Application by Karta of joint Hindu family—If recognized—Omission to join others—If fatal.*

The Karta character of a Hindu elder member of the family has not been recognized in the Encumbered ...ld ...4 ...on ...ne ...nd *Mehta, J. M.*) DURGA BUX SINGH *v.* DURGA BUX ...938 A.W.R. (B R.) 371.

...nembers of joint Hindu ...o sign as guardians of ...after limitation—If can

S. 4 of the Act, who family, omit to sign the ...ir minor sons but bring the Court at the earliest ...xpiry of limitation, and ...heir application by the ... sons, whose existence ...is no reason why ...). 6, R. 17, C. P. ...annot be allowed ...ie Act. (*Darling,* ...Y BEHARI LAL *v.* 1937 R.D. 590.

...to special Judge—...hat application not duly made—Jurisdiction to hear and determine—Duty of Collector.

If an application under the Encumbered Estates Act,

Dismissal—Special Judge, if can restore for sufficient cause.

restore it on sufficient cause being shown. (*I*...
RAM SWARUP v DEVI DAS
1938 A.W.R. (H.C.) 707 = 1938 A.L.J.
1938 R D. 867.

——Ss 4 and 13—*Application under S. 4 and order under S 6—Written statement after period allowed—Order declaring debt discharged under S. 13—Creditor, if can thereafter object to validity of original application.*

Where an application is filed under S. 4 of the U. P. Encumbered Estates Act and an order had been made under S 6, and a creditor files his written statement beyond the period allowed by the law and the special Judge ordered that the debt should be deemed to have been discharged according to S 13 of the Act, then such a creditor has no *locus standi* to object before the Collector that the original application under S. 4 of the Act is not a valid one. (*Darling, S.M. and Mehta, J.M.*) BHAWANI SINGH v. DHOOM SINGH
1938 R D. 732 = 1938 A.W.R. (B R.) 368.

the date when the United Provinces Encumbered Estates Act came into force, cannot on the strength of a subsequent acquisition of property in that district, make an

Where the special Judge
under Cl (7) of S. 14 of the
Act and it has been transmi...
late a stage to allow objections as to the original applications to be entertained. (*Darling, S.M*) TEJ SINGH v. KANHYA LAL.
1938 A.W.R. (B R) 204 = 1938 R.D 650 (1).

——S 4—*Application under—When could be made—*

U. P. ENCUM. EST. ACT (1934), S. 4.

passed under S 6, on an objection by a creditor that some of the heirs had not been mentioned, the applicants

——S. 4—*Application under—Failure to include all members—Effect*

The failure to make any mention of the existence of other members of the joint Hindu family renders the application by some only of the members under S. 4 of the Encumbered Estates Act invalid. (*Darling, S.M. and Bomford, J. M.*) PHOOL SINGH v. HARKESH.
1938 A.L.J. (Supp) 21 = 1938 R D 404 = 1938 A.W.R. (B.R.) 169 (1).

——S. 4—*Application under—Failure of member of joint Hindu family to disclose existence of son's sons—If could be remedied.*

Where the applicants under S. 4 of the Encumbered Estates Act being members of a joint Hindu family, specifically stated in their application, that there were no other members, but it was subsequently found that
is made
...ddition of
...lefect is a
S M. and
...SINGH.
...R.D. 352.

——S. 4—*Application under—Form—Absence of signature—Vakalatnama also unsigned—Defect, if curable by amendment.*

Bomford, J.M.) RAMA SHANKAR v. SHYAM LAL.
1938 R D. 365 = 1938 A.W R. (B R.) 214.

——S. 4—*Application under—Specification of all properties on which claim is based—Necessity—Omission—Effect.*

tion.

Where an application under S. 4 of t' Provinces Encumbered Estates Act is mad only of the members of a joint Hindu famil; transferred to the special Judge under S. 6, jurisdiction to allow an amendment of the under S. 4, by the inclusion of the other men application to amend made long after the period of limitation and without giving any reason for the omission to join all the members, cannot be allowed. (*Darling, S. M. and Mehta, J. M.*) BRIJ BAHADUR SINGH *v.* MAHABIR SINGH. 1938 R D. 888 = 1938 O W.N. 1142.

——S. 4—*Defective application under—Amendment—Stage—Applicant aware of defect—If entitled to ask for amendment after expiry of period of limitation.*

Where an applicant under S. 4 of the Encumbered Estates Act had ample warnings of the defects in his application and knew full well that it was defective well within time to allow him for amendment, seeks to apply for amendment after the period of limitation had expired, it should not be allowed at that stage. (*Darling S.M. and Bomford, J.M.*) KEDAR NATH *v* BAL KRISHNA. 1938 A.W R. (B R) 138 = 1938 R D. 268.

——Ss. 4, 6 and
S. 4—Order under S
for correction of vita
under S. 6 in revision—

Where an applicat
Encumbered Estates
mandatory provisions of the second proviso to that section, but nevertheless an order had been passed under S. 6, and the defect is discovered too late for correction, the Board in the exercise of its revisional powers under S. 46 could cancel the order inadvertently passed under S. 6. (*Darling, S.M. and Mehta, J M.*) KARORI MAL *v.* RATI RAM. 1938 R D 736 = 1938 A W R (B R) 369

1938 A.W.R. (B R) 357 = 1938 R D 854 (1) = 1938 A.L J. (Supp) 122 = 1938 O W.N. 1113

——S. 4—*Groveholder paying no revenue or cess—Right to apply under*

v. CHUNNI LAL.
1938 A.W.R. (B.R) 127.

——Ss. 4 and 9—*Issue of notice under S 9—Creditor's objection as to non-disclosure of existence of sons—Application, if to be rejected.*

Where a creditor, after the issue of notice under S. 9 of the U. P. Encumbered Estates Act, raises an objection as to the non disclosure of the existence of sons of one of the applicants, which is not denied, the order inadvertently passed under S 6 should be cancelled and the application rejected. (*Darling S.M. and Bomford*

J.M.) HAR MOHAN SINGH *v.* HARBAKHSH. 1938 R.D. 428.

——S. 4—*Joint application—One of applicants not a landlord—Liability joint with others—Joint applica-*

S.M. and Bomford, J.M.) ILTIFAT AHAMAD *v.* FARID UDDIN AHAMAD. 1938 R. D. 447 = 1938 A.W.R. (B R) 317 = 1938 A.L J. (Supp.) 105.

——S. 4—*Manager of wakf property—Right to apply under—"Landlord".*

The manager of a wakf property whose name is entered in the khewat as such is the landlord for purposes of S 2 (*g*); such a manager is entitled to seek the protection of the Act on behalf of the property and is therefore competent to apply under S. 4. (*Darling, S M and Bomford, J.M.*) SHIV CHARAN JAITLY *v.* MAHOMED RAZA KHAN. 1938 R D. 201 = 1938 A.W.R. (B.R) 126

——S. 4—*Misdescription in application under—Sarbarakar of idol,* bona fide *applying in personal capacity—Disclosure within limitation—Application, if can be amended.*

nder S. 4 of the U. P.
Sarbarakar of an idol,
but the misdescription
applicant himself well
mala fides the clerical
rling, S.M. and Mehta,
J.M.) MANI RAM *v.* JATI HAR PRASAD. 1938 O.W.N. 1069 = 1938 R D. 819.

——S. 4—*Mutawalli—Right of to apply under*

The mutawalli of a mahal is entitled to apply under the Encumbered Estates Act. (*Darling, S.M. and Bomford, J.M.*) KAILASH BEHARI LAL *v.* MOBTIDA KHAN. 1938 R D. 196 = 1938 A.W R. (B R.) 123.

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D. 482.

——S. 4—*Objections to application under—If could be raised after passing of decree under S.* 14.

It is much too late to find fault with an original appli-
4 of the U. P. Encumbered Estates Act,
of omission to join certain minor sons,
decree has been passed under S. 14 of the
g, S.M. and Mehta, J M.) JHABBU LAL
SINGH. 1938 R D. 841 = 1938 O.W.N 1114.

——S. 4—*Omission to include sons—Objection after issue of notice under S. 9—Order to be passed.*

Where after the issue of notice under S. 9 of the Encumbered Estates Act a creditor raises an objection that the existence of sons of the applicant are not disclosed, and it was admitted to be so, it was held that the application did not comply with the provisions of S. 4 of the Act and that the order inadvertently passed under S. 6 should be cancelled. (*Darling, S.M.*

and Bomford, J M) MOHAN SINGH *v.* HAR BAKHSH SINGH. 1938 A.W R (B R.) 276 = 1938 R D. 772 (2).

——Ss. 4 and 6—*Order transferring application to special officer—Subsequent order under Regulation of Sales Act—Effect.*

No order under the U P Regulation of Sales Act

1938 A.W.R (B R) 212 = 1938 A L.J. (Supp) 71 = 1938 R D. 678.

——Ss. 4 a

Applicant not

or at time of f

for cancellati

Khewats are only to be filed with th under S 4 of the Encumbered Estates A evidence that the applicant is a landlord be cases where the *khewats* might be brou formity with the facts after the expiry of the Act with

tion was filed or when it was forwarded to the special Judge. (*Darling, S. M and Bomford, J. M*) BATULAN *v* ADIT BAKSH. 1937 R D. 482 = 1937 A.W.R. 1032.

——S. 4—*Persons entitled to protection of Act—'Landlord'—Meaning of.*

tection of the Act managed to recover a portion just sufficient to bring him within the definition of a landlord (*Darling, S. M. and Bomford, J. M.*) BHOLA NATH *v.* ROSHAN. 1937 R D. 358.

——S 4—*Right to apply—Landlord—Proof of—Applicant not recorded as landlord in Khewat—Entry in papers showing him as muafidar, muafi atta Zamindaran—Settlement parcha showing applicant as malikan adna—Value of*

to show that he fact that t make him

(*Darling, S M. and Bomford, J.M*) RAM SIDH SINGH *v.* BALRAM PANDE. 1938 R D. 119 = 1938 A.W.R 75 (B R.).

——S. 4—*Right to apply—Persons becoming landlords after the Act had come into force—Gift of entire property to son—Son if can be accepted as heir.*

It is only those who are landlords on the date on which the U. P. Encumbered Estates Act came into force, are entitled to the protection of the Act. Those becoming landlords subsequent to that date are not so entitled. Where a father transfers his entire property to his only son after the Act came into force, the son cannot be accepted as an heir as contemplated by the Act, so long as the

and Marsh, J.M.) 1938 R.D. 556 = A.W R. (B.R.) 253.

—*Applicant selling his property, reserving a right to re purchase*—Locus standi.

Where a zamindar has sold his property reserving

e claim the Encumbered *ord, J.M.*)

1938 R D. 354 = 1938 A.W.R (B.R) 195.

harers collec- individually NCUMBERED .W.N. 1122.

——S. 4—*Right to apply under—Landlord parting with his interest by sale—Separate agreement for re-purchase.*

The advantages given to landlords under the Encumbered Estates Act cannot be claimed by one who has divested himself of his liabilities as landlord by an out

with a separate agreement about . (*Darling, S M. and Bomford,* NGH *v.* SHEO RATAN SINGH. 338 = 1938 A.W.R. (B.R.) 128.

apply under—Under-proprietors transferring bulk of property by way of gift—Deed providing for right of donee to apply for mutation and to conduct and finance litigation under Encumbered Estates Act—Property retained by donors paying less than Re. 1 as local rate—Application by donors under S. 4 subsequent to transfer—Competency.

Certain under-proprietors transferred the bulk of their property to one *B* by a deed of gift, and the very next day they filed an application under S. 4 of the Encumbered Estates Act jointly with *B*. The property retained by the under-proprietors had a local rate of less than Re. 1. The deed of gift provided that the donee *B* was entitled to apply for mutation forthwith the litigation under the find the finance for the with performing his part,

, that the deed of gift was not merely a nal deed of gift, but was a transfer for consi- by which the under-proprietors parted with prietary rights, and handed over to *B* all the

Re. 1, they were not entitled to apply under S. 4. (*Darling, S M. and Bomford, J.M.*) JANG BAHADUR SINGH *v.* MOTI SINGH. 1938 R D. 83 = 1938 A.W.R. (B.R.) 54.

——S. 4—*Right to apply under—Undischarged insolvent.*

U. P. ENCUM. EST. ACT (1934), S. 4.

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(*Darling,*
v. NAGAR MAL. 1938 R.D. 118=
1938 A.W.R. (B.R.) 48=1938 O.A. 225=
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——S. 4 (1) (b)—*Application by*
—Omission to give names and addre
parceners—Effect.

Where an applicant under S. 4 of the Encumbered Estates Act is a member of a Hindu joint family, it is incumbent on the applicant to give the names and addresses of the remaining members of his family who do not join him in his application and from whom he wishes to separate. Failure to do so is a fatal defect which cannot be remedied after a long lapse of time (*Darling, S.M. and Bomford, J.M.*) GANGA DHAR v. BABU LAL. 1938 R.D. 197=1938 O.A. 171=
1938 O.W.N. 784.

——S. 4 (1) (b) and rule 2 (3) of Rules framed under S. 54—*Application under S. 4—Omission to give names of all the members of the joint Hindu family—*
Act

...ers of such a family, who do not join in the application, should be given. Hence the failure to disclose the presence of other members of a family, is a fatal flaw in the application. (*Darling, S.M. and Bomford, J.M.*) GANGA DHAR v. BABU LAL.
1938 A.W.R. (B.R.) 5=1938 R.D. 148.

Estates Act came into force. (*Darling, S.M. and Bomford, J.M.*) BABOO RAM v. SUKH LAL.
1938 A.W.R. (B.R.) 270=
1938 R.D. 489=1938 A.L.J. (Supp.) 93.

——S. 4 (4)—*Applicability—Benefit under—Right to claim.*

U. P. ENCUM. EST. ACT (1934), S. 4.

to benefit of S. 4 (4).

The word "prevent" connotes some physical disability

than by application under the Act, and abstains from applying in the hope that his private negotiations would be fruitful and would render an application unnecessary cannot be said to be "prevented" from applying within the meaning of S. 4 (4) of the U. P. Encumbered Estates Act, so as to be entitled to the benefit of that clause. If he applies only when his hopes are finally disappointed, he cannot claim the benefit of S. 4 (4). (*Darling, S.M. and Bomford, J.M.*) SHEONANDAN PATHAK v. EMPEROR. 1937 R.D. 396=
1937 A.W.R. 868.

——S. 4 (4)—*Delay in applying—Sufficient cause—Widow going on pilgrimage pending mutation proceedings on death of her husband—Application on return after limitation—Widow, if 'prevented' from applying*

...the Encumbered Estates Act, it was held ... been 'prevented' within the meaning of S. 4 (4) of the Act from applying within the ordinary limitation. (*Darling, S.M. and Bomford, J.M.*) RATAN PRAKASH v. EMPEROR. 1938 R.D. 362=
1938 A.W.R. (B.R.) 198.

Where certain debtors pleaded that they thought their interests would be sufficiently protected by the application of their co-debtors and that they were misled in so thinking, that circumstance was held to be not such by which these debtors were 'prevented' from presenting their application in time. (*Darling, S.M. and*

Bomford, J.M.) BABOO RAM *v.* SUKH LAL.

[illegible]

of the Encumbered Estates Act, when the applicant gives no adequate reason to explain the delay beyond the plea that he was advanced in years and was continuously ill. It is the duty of the applicant to support his allegations by evidence. *(Darling, S M. and Bomford, J.M.)* JAGAT SINGH *v.* KUNWAR SEN. 1937 R D. 484=1937 A.W R. 1034.

——S. 4, proviso 2—*Scope—If mandatory—Failure to disclose existence of sons living jointly with applicant—Amendment after period of limitation—If permissible.*

Proviso 2 to S. 4 of the Encumbered Estates Act is a mandatory provision. The omission on the part of an applicant to disclose the existence of sons living jointly with him, whether accidental or deliberate, is a most [illegible]

——S. 4, proviso 2—*Scope—Mandatory.*

Proviso 2 to S. 4 of the Encumbered Estates Act is mandatory, and non-compliance with its terms is fatal. *(Darling, S.M. and Bomford, J.M.)* GUR DIN LAL *v.* SHEODARAN SINGH. 1938 R D. 112=1938 A.W.R (B R.) 64.

——Ss. 6 and 4—*Application under S. 4—Applicant, if a landlord—Test — Decision—F*[illegible] *Revenue Court—Duty of Collector to come* [illegible] *finding—S. 2 (g).*

The Revenue Courts will not ordinarily [illegible] the entry in the khewat for the purpose of deciding whether an applicant under S. 4 of the Encumbered Estates Act is a landlord within the meaning of Cl. (*g*) of S. 2 of the Act. So long as his name is not in the khewat, he is not [illegible] Act. The Collect[illegible] as to whether the [illegible] and should not b[illegible] *Bomford, J M.)* [illegible]

1938 A L.J. (Supp) 5=1938 A.W.R. (B R) 95=1938 R D. 337

——S. 6—*Collector's power to review o*[illegible]

Once an order has been made under [illegible] cumbered Estates Act and the applicatio[illegible] the special Judge, the Collector has no p[illegible] the order on the ground of error or mistake. The Board of Revenue alone is entitled to interfere in revision. *(Darling, S M. and Bomford, J.M)* AMJAD HUSAIN *v.* CHUNNI LAL. 1938 R D. 202 (1)=1938 A.W R (B R.) 127.

——Ss. 6 and 7 (1) (a)—*Effect of order under S. 6—Failure to appeal against order directing continuance of execution—If can validate subsequent proceedings.*

As soon as an order under S. 6 of the Encumbered Estates Act has been passed, then under S. 7 (1) (*a*) of the Act, all the execution proceedings shall become null and void from the date of the order. The fact that an order directing continuance of execution proceedings was not appealed against, cannot possibly validate such pro-

ceedings. *(Darling S. M. and Mehta, J M.)* SHEO SHANKAR *v.* PANCHAITI AKHARA 1938 R.D 751=1938 A W R. (B.R.) 359 (1).

——Ss. 6 and 7—*Effect of order under S. 6—Nature of proceedings to be stayed under.*

As soon as an order is passed under S. 6 of the Encumbered Estates Act, the Court is bound to take action under S 7 of the Act, and stay all proceedings in respect of a debt with which the applicant's property is encumbered. This has to be done even though some property which has been purchased by another person is also encumbered by that debt. *(Bennet and Varma, JJ.)* RAGHUBAR DAYAL *v.* AMBA PRASAD I L R 1938 All 670=1938 A L J 576=1938 R D. 589=176 I C 401=11 R A 92=1938 A L R 609=1938 A.W R (H C.) 330=A I.R 1938 All 390.

——S. 6—*Objection by some creditors that applicants are not landlords—Applicant, if can demand addition of all creditors to enquiry—Willingness to pay costs*

Where on an application under S. 4 of the Encumbered Estates Act some of the creditors raised the [illegible] landlords, and [illegible] creditors should [illegible] the order may be [illegible] their costs, there [illegible]ould not be met. [illegible] JAI DAI KUN- [illegible] 1938 R.D 357=1938 A W.R. (B R.) 196 (1).

——S. 6—*Objection by some of the creditors to order under—Debtors if entitled to demand impleading of other creditors—Condition as to costs.*

Where some of the creditors object to the passing of an order under S. 6 of the Encumbered Estates Act and the debtor wishes to have impleaded all the other [illegible] may be [illegible] *(Darl-* [illegible] NATH *v.* [illegible]). 343=1938 A.W R. (B R) 196 (2).

——S 6—*Order under—Cancellation — Assistant Collector—Jurisdiction of.*

An Assistant Collector has no jurisdiction to cancel [illegible]

——Ss 6 and 46—*Order under S. 6—Cancellation by S D. O.—Legality—Proper procedure.*

[illegible] cancel the [illegible] Act, passed [illegible] mistake had [illegible] record to the [illegible] *Darling, S. M. and Bomford, J.M.)* BABOO RAM *v.* SUKH LAL. 1938 A.W R. (B.R.) 270=1938 R D. 489=1938 A.L J (Supp.) 93.

——S. 6—*Order under—Cancellation—If the Board only can.*

When once an order under S. 6 of the Encumbered Estates Act is passed, it is only the Board that could cancel such an order. *(Darling, S M. and Bomford, J.M.)* RAMA SHANKAR *v.* SHYAM LAL. 1938 R D. 365=1938 A.W.R. (B R.) 214.

——Ss. 6 and 46—*Order under S. 6—Considered wrong—Procedure to be followed.*

The S. D. O. has no authority to cancel an or[illegible] once passed under S. 6 of the U.P. Encumbered

U. P. ENCUM. EST. ACT (1934), S. 6.

Act. He should, if he finds that a mistake has been made, submit the case to the Board in revision under S 46, with his recommendation. (*Darling, S.M. and Bomford, J.M.*)
AHAMAD. 1938 R

——S. 6—Orde
realisation of compensation in partition case. *See* U. P. ENCUMBERED ESTATES ACT, SS. 7 AND 6.
1938 R.D. 349.

——S. 6—*Order under—Mistake—Duty of Collector.*

If a mistake had been made in passing an order under S. 6 of Encumbered Estates Ac
should refer the case to the Board for
S. 46 of the Act and not cancel the
passed. (*Darling, S.M. and Bomford, J.M.*) SANT LAL *v.* ALLAHABAD BANK, LTD., JHANSI.
1938 A.W.R. (B.R.) 146=1938 R.D. 288.

——S. 6—*Order under—Mistake in—Objection by creditor subsequently—Refusal to take cognisance by Sub-Divisional Officer—Propriety—Proper course.*

If it is found by a Sub-divisional Officer that a mistake

1938 A.W.R (B R.) 126=1938 R.D. 201.

——S. 6—*Order under—Objections subsequently filed by creditor—Duty of Collector—Objecting creditor—If can be referred to special Judge.*

It is only the Revenue authorities that can decide

tection of the Act, it is the
enquire into the objection and
that the objection could not b
other hand he comes to the
cant under S. 4, not being a landlord within the meaning of the Act, is not entitled to the protection of the Act, he should submit the case to the Board for orders in revision under S. 46 of the Act with a recommendation that his order inadvertently passed under S. 6 should be cancelled. The Collector should not refer the objecting creditor to the special Judge. (*Darling, S M. and Bomford, J.M.*) BHOLA NATH *v.* ROSHAN.
1937 R D. 358.

——S. 6—*Order under—Power of Sub Divisional Officer to cancel his own order.*

1937 R.D. 371.

——S. 6—*Order under—Setting aside—Procedure—Sub-Divisional Officer, if can cancel predecessor's order.*

The Sub-Divisional Officer has no authority to cancel the order passed by his predecessor under S. 6 of the Encumbered Estates Act. If, for any reason, he comes to the conclusion that, it is erroneous or made by mistake, he should submit the record to the Board with a recommendation. The Board in its exercise of revisional
46 pass suitable orders. (*Darling, S. J.M.*) ALAUDDIN KHAN *v.* NARAIN
8 R D. 544=1938 A.W.R. (B.R.) 246.

——S. 6—*Power of review—Power of Deputy Commissioner to cancel order—Proper procedure.*

The Deputy Commissioner who has passed an order under S. 6 of the United Provinces Encumbered Estates Act has no jurisdiction to cancel an order passed under S. 6 if he thinks that a mistake has been made in
rect procedure for
after hearing the
can then exercise
its revisional powers under S. 46, and cancel the order. (*Darling, S.M. and Bomford, J.M.*) GUR DIN LAL *v.* SHEOBARAN SINGH.
1938 R.D. 112=1938 A.W.R. (B.R.) 64.

——S. 6—*Power of Court—Application by creditor for review—Competency when he was no party to order.*

S. 6 of the U. P.
ower to review that
whole of the C. P.
since 1st January,
e Act. But the only
or a review is the
rejected for wrong
all a party before the
Court when it passed the order in question has no *locus standi* to apply for a review. (*Darling, S.M. and Bomford, J.M.*) RAM BUX SINGH *v.* RAM PRASAD.
1937 A.W.R. 1176=1938 R.D 17.

——S 6—*Review—Power to review order under—*

isional Officer who has passed
United Provinces Encum-
not review that order subse
the application under S. 4
roper procedure, if he
, is to submit the case
46. (*Darling, S.M.*
AD *v.* PARMESHWARI DAS.
1938 R.D. 137=1938 A.W.R. (B.R.) 44.

——S. 6—*Right to apply under S. 4—Challenging of—Procedure—Technical point—Strict compliance of rules of procedure—Necessity—Extension of time, if can be granted—Applicability of S. 151, C. P. Code.*

When the point taken by the person who wishes to deprive the debtor of the benefits which the Encumbered Estates Act is intended to confer, is a purely technical one, he must be made to conform strictly to the procedure prescribed. Though the usual procedure is to file a review of the order of transfer under S. 6 of

stitute an injustice by itself. (*Darling, S.M. and Bomford, J.M.*) RAMA SHANKAR *v.* SHYAM LAL.
1938 R.D. 365=1938 A.W.R. (B.R.) 214

——Ss. 6 and 7—*Sale after order under S. 6—Setting aside of—Board subsequently setting aside order under S. 6—Effect.*

U. P. ENCUM EST. ACT (1934), S. 6.

Where a sale in execution was held, but prior to which an application under S. 4 of the Encumbered Estates Act and an order under S 6 of the Act had been passed, and as a result the sale is set aside, the fact that subsequent to the setting aside of the sale, the Board had cancelled the order under S. 6, could not affect the question as to validity of the order setting aside the sale. (*Mulla, J*) BULAQI DASS *v.* GHULAB CHAND.
1938 A.W.R. (H.C) 705=1938 A L.J 1061=1938 R D. 865.

——S. 6—*Sale in execution of decree for arrears of land revenue—Subsequent order under S. 6 in favour of judgment-debtor—Effect—Procedure to be followed.*

Where a sale has been held in execution of a decree for arrears of land revenue and where subsequently the judgment debtor obtains an order under S. 6 of the Encumbered Estates Act, the sale cannot be upheld, but the execution proceedings should be kept open pending disposal of the application under Act. (*Darling, S.M. and Bomford, J M*) ABDUL SHAKOOR *v.* ABDUL KAREEM 1938 R D 348=1938 A W R (B.R.) 184.

——Ss 6 and 7—*Scope—Appl*
Effect on proceedings under Regulat
Once an application under the
Act has been sent to the Judge, the
the Regulation of Sales Act which are pending are automatically stayed. (*Darling S.M and Bomford, J. M.*) BHARATH PRASAD *v.* LACHHMAN PRASAD.
1937 R D.

——Ss. 6 and 7—*Scope-*
Power to question legality of
under S. 6—Effect of.

Collector's order forwarding the applicat
proof of the fact that the applicant
benefit of S. 7. The special Judge has
the applicant is entitled to the benefits o
proceed upon that assumption (*Niamatullah and Mahomed Ismail, JJ.*) BRAHMA NAND *v.* SHIAM LALA.
1938 A.L R
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——S. 7
Provinces
The United
only a local a
profess to apply to any Court other than a Civil or Revenue Court in the United Provinces. Consequently the jurisdirtion of a Court passing a decree outside the Province to appoint a receiver in exec
fettered by a decision of a Court
declaring the execution proceedings n
S. 7 of the Act. (*McNair, J.*) A.
v. OJHA AUTOMOBILE ENGINEERIN
I.L R. (1938) 2 Cal 541=42 C.W N. 940.

——S. 7—*Applicability—Proceedings for restitution—If,*
A
any
party
of a d
restitution can therefore be stayed under S. 7 of the Encumbered Estates Act, if the application for stay is a genuine application and not intended to defeat the particular debt alone. (*Darling, S M. and Bomford, J M*) RAM ADHAR PATHAK *v.* INDRADEO SINGH
1937 R.D. 444=1937 A W.R. 1029.

U. P ENCUM. EST. ACT (1934), S 7

——S. 7—*Application for stay under—Forum.*

An application for stay of proceedings under S. 7 of the U. P. Encumbered Estates Act must be made not to the special Judge, but to the Court in which those proceedings are pending which it is sought to be stayed, for, the first point to be decided in such an application is whether the proceedings in question are of such a nature as to be affected by S. 7 of the Act and it is the Court where those proceedings are pending who knows the exact nature of the proceedings and who can therefore come to a decision whether they should be stayed or not. (*Hamilton, J.*) PURANDHER SINGH *v.* RAI BISHNATH SARAN SINGH
1938 O.A. 586=1938 R.D 719=1938 A.W.R (C C.) 69=1938 O.W.N. 750.

——S. 7—*Applicability—Suit under S. 53 of the Transfer of Property Act—If a suit in respect of a*

proceedings in respect of any public or private debt includes all proceedings which can have any ultimate bearing not merely on any public or private debt but on

83=1938 A.W R. (C.C.) 66=
R.D. 686=1938 O L.R. 350=
A.I R 1938 Oudh 192.

ty—Transfer to decree-holder
of Sales Act—Execution and
bsequent order under S. 6 of
—Proceedings for formal pos-
t can be stayed.
ansferred to a
of Sales Act
nd registered,
Estates Act is
passed, proceedings in connection with an application by the decree holder for formal possession, cannot be

——Ss. 7 and 6—*Compensation payable in partition case—Recovery of—If stayed by operation of S. 7.*

The claim in respect of a liability to pay compensa-

and have to remain so stayed so long as that provision remains operative. (*Darling, S.M and Bomford,*

There is no reason why property which a partner of firm owns should not be taken in execution by

creditors of the firm merely because another partner of that firm has sought the protection of Provinces Encumbered Estates Act. (*Mc* A. MILTON AND CO. *v.* OJHA AUTOMOBI NEERING CO. I.L.R. (1938) 2 (

42 C.W.N. ...

...der

P.

... that the word 'debt' in S. 7 connotes a contract. On the other hand S. 2 (a) lays down that 'debt' includes any pecuniary liability except a liability for unliquidated damages. The words 'any pecuniary liability' are wide enough to include not only costs payable under a decree, but also mesne profits awarded. Those profits cannot be 'unliquidated damages' as their amount ... inquiry by Court. (*Thomas, C.J. and* ... *J.*)

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debted landlord in a Province other than the United Provinces, a special Judge in the United Provinces is not competent to issue an injunction indefinitely restraining such a creditor from executing his decree against property of the debtor in that Province. The United Provinces Encumbered Estates Act is concerned exclusively with the protection of land in the United Provinces. The words of S. 13 of the Act are certainly very wide but it is doubtful whether under the Act a Court in the United Provinces has power to declare that a decree obtained in another Province by a creditor who has not had recourse to the special Judge, is discharged

——S. 7—*Execution process—If includes sale in execution of a decree.*

An order passed by a Court executing a decree, for sale, which is carried out by a ministerial officer,

the Encumbered Estates Act, any creditor feeling aggrieved by such an order should go before the Board by way of revision under para. 1011-A of Manual and not by way of appeal under Act. (*Darling, S. M. and Marsh, J.*) SINGH *v.* NARAIN DAS. 1938

1938 A.W.R.

S. 7

ings, the subsequent appointment of a receiver to such judgment debtor's property is contrary not only to the prior order staying execution but also to S. 7 of the Act,

for the appointment of a receiver is only a process for

——S. 7—*Proceedings in execution in Court not situated in U. P.—If can be stayed—C. P. Code, O. 39, R. 7.*

There is no provision in the United Provinces Encumbered Estates Act for stay of execution proceedings against the property of the applicant in a Court not situated in the United Provinces. Nor can such an order be passed under O. 39, R. 7, C. P. Code. An order staying sale of property in execution of a decree is not an order for 'preservation' of that property. Moreover, under O. 39, R. 7 (1) the property sought to be

1938 O.W.N. 136 = A.I R. 1938 Oudh 87.

——S. 7—When comes into operation. *See* U. P. REGULATION OF SALES ACT, S. 5. 1938 R.D. 363.

——S. 7 (1) (a)—*Application under—Proper Court.*

The appropriate Court to which an application for stay under S. 7 (1) (a) of the Encumbered Estates Act is the Court which is executing the decree and in which the execution proceedings are pending. (*Sulaiman, C. J. and Harries, J.*) BABU RAM *v.* MANOHAR LAL. I.L.R. 1938 All. 22 = 173 I.C. 167 = 1938 A.L.R. 98 = 10 R A. 466 = 1938 R.D. 84 = 1937 A.W.R. 986 = A.I R. 1938 All. 6.

...n sale— ... —Deli- ... Encum.

... 21, R. 95 and got possession of property, it was held though the sale had been held, it had not been confirmed and that on the passing of an order under S. 6 of the Encumbered Estates Act all proceedings had to be stayed under S. 7 ... possession became null and void and ... (*Zia ul-Hasan and Yorke, JJ.*) ... MADAN MOHAN LAL. 177 I.C. 543 = ... R.O. 50 = 1938 A W.R. (C C.) 119 = ... 1938 O.W.N. 911 = 1938 R.D. 765 = 1938 O.L R. 422 = A I R. 1938 Oudh 221.

A.I R. 1938 All 165.

——S. 7 (1) (a)—*Construction—Joint decree against several persons—Application by one only—Stay—If to be granted.*

In the case of a decree jointly against several persons, the judgment debt being a joint debt, the execution has to be stayed under S. 7 (1) (a) of the Encumbered Estates Act even if one only of the judgment-debtors

——S. 7 (a) (b)—*Nature of proceedings contemplated by—Application by indebted landlord under S. 30, Agriculturists' Relief Act—Competency.*

The proceedings, attachments, processes and suits mentioned in Cls. (a) and (b) of S. 7 of the United Provinces Encumbered Estates Act, refer to proceedings,

an application under S. 30 of the Agriculturists' Relief Act is not incompetent. (*Collister and Bajpai, JJ.*) SHEO BARAN SINGH *v.* RANBIR PRASAD.

177 I.C. 215=1938 A.L.J 541=1938 A.L.R. 724=1938 A.W.R. (H.C.) 324=11 R.A 182=A.I.R. 1938 All. 477.

——S. 7 (1) (a)—*Scope of—Suit for specific performance of contract to sell—If a proceeding in respect of a debt.*

the sale which was agreed upon between the parties was in lieu of prior debts which were due from seller to the purchaser, it cannot be said that the suit for specific per-

proceedings are pending becomes aware in any manner whatsoever that an order has been passed under S. 6 of
forth-
the Act
Court.

is

——S. 7 (1) (b)—*Applicability—Suit for possession of immovable property—If barred by order under S. 6.*

S. 7 (1) (*b*) of the Encumbered Estates Act has no application to suits for possession of immovable property. A claim to possession of such property does not fall within the purview of S. 7 and is consequently not

barred by reason of a prior order under S. 6 of the Act. (*Iqbal Ahmad and Allsop, JJ.*) CHAMPA DEVI *v* ASA DEVI. I.L.R 1938 All 71=172 I.C 956=10 R.A. 441=1937 R.D. 577=1938 A.L.R. 53=1937 A.W.R. 933=1937 A.L.J. 945=A.I.R. 1938 All 8.

——S. 7 (1) (b)—*Bar of suit—Debtors jointly and verally liable—Landlord debtor alone applying under 4—Suit against both—Other debtor, if can object to stitution of suit as against him.*

Any person who is not a landlord, but who incurs a liability jointly and severally with a landlord who makes an application under S. 4 of the Encumbered Estates Act, cannot plead that no suit can be instituted against him in respect of that liability. It is only in those cases where his liability with the landlord is only joint

n to him to contend
In the former case,
, it can be proceeded
who is not a 'landlord.' (*Mulla, J.*) SWEDESHI BIMA CO. *v.* SHIV NARAIN. 1938 R.D. 876=1938 A.L.J. 1153=1938 A.W.R. (H.C.) 738.

——S. 7 (b)—*Bar of suit under—Forfeiture of tenancy owing to non payment of rent—Suit for ejectment—If barred.*

A suit for ejectment on the ground of forfeiture of tenancy owing to non payment of rent, is a suit 'in respect of' the arrears of rent, which must be held to be 'debt' as defined in the
Estates Act, and hence
t. (*Niamatullah, Ag.*
BIHARI LAL *v.* MANMOHAN LAL. I.L.R. 1938 All. 246=174 I.C. 304=1938 A.L.R. 260=10 R.A. 562=1938 A.W.R. (H.C.) 71=1938 R.D. 103=A.I.R. 1938 All. 165.

suit—Suit for perpetual
from a 'landlord' against
n respect of any debts.'

a perpetual injunction to
ortgagor (who had
ed under S. 4 of
from dealing with
and that the leases
cannot be said to
in the meaning
Estates Act and
by the above pro-
J.) JAI NARAIN MISRA *v.* SHIAM LAL. 1938 O.L.R. 494=1938 A.W.R. (C.C.) 102=1938 O.W.N. 1109=1938 O.A. 897=1938 R.D. 873.

——S 7 (1) (b)—*"Debt"—Claim for mesne profits.*

A claim for recovery of mesne profits is not a claim

1937 A.W.R. 933=1937 A.L.J. 945=A.I.R. 1938 All. 8.

S. 7 (1) (b)—*"Debt"—Suit to enforce pecuniary liability imposed by deed of settlement.*

A suit to enforce a pecuniary liability imposed on the defendant by a deed of settlement is a suit in respect of a "debt" as defined by the Act. (*Iqbal Ahmad and Allsop, JJ.*) CHAMPA DEVI *v.* ASA DEVI.

I.L.R. 1938 All. 71=172 I.C. 956=10 R.A. 441=1937 R.D. 577=1938 A.L.R. 53=

U. P. ENCUM. EST. ACT (1934), S. 7.

1937 A.W.R. 933=1937 A.L J. 945= A I R. 1938 All. 8.

——**S. 7 (1) (b)**—*Scope—Suit comprising several reliefs—Some falling under S. 7 (1) (b) and others not falling under—Order staying entire suit—Legality—Order recalling and cancelling stay—Jurisdiction.*

Where in a suit it is found that some of the reliefs claimed fall within the purview of S. 7 (1) (*b*) of the U. P. Encumbered Estates Act, but that the others do not so fall, there is no bar to the granting of relief in respect of the claims which do not fall within the mischief of S. 7 (1) (*b*). An order staying the entire suit in such a case is wrong in law and unjust, but the Court has jurisdiction to recall its order staying the entire suit; and its order so recalling the previous order cannot be challenged, because a Court has inherent jurisdiction to recall and cancel its invalid order (*Iqbal Ahmad and Allsop, JJ.*) CHAMPA DEVI ASA DEVI. I L R. 1938 All. 71=172 I.C. 956= 10 R.A. 441=1937 R D. 577=1938 A L R. 53=

pledged goods.

Under Cl. (2) of S. 7 of the Encumbered Estates Act, the person who is debarred from dealing in the property defined in that clause, without the consent of the Collector, is the landlord. A pledgee not even of the applicant landlord, but of the firm in which he is one of the partners, cannot, therefore, be restrained from

Competency.

execution of the sale deed by Court that transfers title to the property. The transfer is by the Court on behalf of

——**Ss. 9 and 11**—*Default in payment of publication charges within time limited—Powers of special Judge to dismiss application.*

10 R O. 272=A.I.R. 1938 Oudh 162.

U. P. ENCUM. EST. ACT (1934), S. 14.

——**Ss 9 (3) and 13**—*Expiry of time allowed under S. 9 (3)—Effect of—Discharge of debt—Power to grant further time.*

The Encumbered Estates Act allows a claimant a certain definite period within which to put forward his claim in a written statement. He has got the period specified in the notice, and in addition a further period of two months at the discretion of the special Judge who may grant it under S. 9 (3) of the Act. But no further time beyond this can be granted. As soon as the period of two months under S. 9 (3) expires, the claim is deemed to have been duly discharged under

cedure—Stay.

special Judge apportions the amount as required by S. 9 (5) (*a*) of the Act (*Darling, S.M. and Marsh, J.M.*) SAHIB SINGH *v.* NARAIN DAS.

1938 R.D. 558=1938 A.W.R. (B.R.) 255.

——**S. 11**—Dismissal of claim under—Appeal—Court fee. *See* COURT FEES ACT, SCH. II, ART. 17 (*iii*). 1938 O A. 767.

——S. 13—Scope of—Powers of Court—Limits *See*

Where the heirs of a mortgagor living in different districts apply under the U. P. Encumbered Estates Act

1938 O A. 621=1938 O.W N. 775= A I R. 1938 Oudh 217.

——**S. 14 (7)**—*Order by special Judge that money* ... *and ap-* ... *due—If*

... a money ... editor in ... a com- ... s decision ... cumbered ... nst that ... (*Zia ul-Hasan and Hamilton, JJ.*) JAGAT JIT SINGH *v.*

U. P. ENCUM. EST. ACT (1934), S. 25.

MUNNOO BIBI. 172 I.C. 941 = 1938 O.L.R 68 (1) = 1938 O.A. 113 = 1938 R D. 212 = 1938 A W R (C C.) 10 = 1938 O W.N. 135 = 10 R O 210 = A.I.R. 1938 Oudh 86.

——**S. 25**—*Costs—Creditor successfully objecting to application under S 4 and order under S. 6—Delay in lodging objections—Right to costs*

A creditor who succeeds in showing that an application under S 4 of the United Provinces Encumbered Estates Act was not duly made and that therefore the order under S 6 should be cancelled will not be awarded costs, if he is guilty of considerable delay in lodging his objection. (*Darling, S M. and Bomford, J M.*) HAR PRASAD v. PARMESWARI DAS. 1938 R.D. 137 = 1938 A.W.R. (B.R.) 44.

——**S. 35 and B. O No. 21 Judicial**—*Delivery of possession under S 35—If barred by B O 21 Judicial directing suspension of proceeding under Ch. V of the Act*

The circular B O 21 Judicial suspend all proceedings under Ch Estates Act, cannot be interpreted delivery of possession of property to such possession under the provi bered Estates Act in accordanc Board never had such an intention all comprehensive but restrictive Hence, where by reason of a simple monetary decree passed by the special Judge under S. 14 (7), a judgment-debtor becomes entitled under S. 18 to recover possession of landed property formerly given in usufructuary mortgage, the B. O cannot apply to any action S. 35 (*Darling, S M and* SINGH v RAM CHARAN

——**Ss. 45 and 46**—*Appeal—Revision—Order of under S 6—Right of appeal—Powers of Board of Revenue.*

Only parties to a decree or order can appeal. In

1938 O A. 220 = 1938 O W N. 1025 = 1938 R.D. 118 = 1938 A.W R (B.R) 48.

——**Ss. 45 and 46**—*Applicability—Order accepting application under S. 4—Creditor's right of appeal to Board—Revision.*

A creditor is not a party

to the proceedings before the Collector on the application. He can, however, apply to the Board by way of revision under S. 46 of the Act. (*Darling, S.M. and*

U P. ENCUM. EST. ACT (1934), S. 46

Bomford, J M.) JAGAT SINGH v. KUNWAR SEN 1937 R D. 484 = 1937 A.W R 1034

——**Ss 45 and 46**—*Order of Collector in proceedings on applications under S. 4—Creditor aggrieved by—Remedy—Appeal or revision.*

As a creditor is not a party to the proceedings before Collector in respect of an application under S 4 of the Encumbered Estates Act, if he is aggrieved by any order should come to the Board by way of revision under S. 46 and not by way of appeal under S. 45 of the Act (*Darling, S.M. and Bomford, J M.*) RATAN SINGH v. JAIDEN SINGH 1938 R D 352 = 1938 A.W.R. (B R) 194.

——**S. 45 (2)**—*Interpretation—Right of appeal—Extent of—Refusal to set aside dismissal for non-payment of publication charges—Remedy.*

S. 45 (2) of the United Provinces Encumbered Estates should not be interpreted to mean that the right of appeal is only against decisions, decrees or orders which fall specifically under the Act in the sense that

1938 O.L R. 212 = 1938 O.W N. 494 = 10 R O. 272 = A.I.R. 1938 Oudh 162.

——**S. 45 (5)**—*"Final"—Meaning of—Revision by High Court—If precluded.*

The term "final" used in S. 45 (5) of the U. P. Encumbered Estates Act only means "not subject to annot be final in the sense that the power ourt to interfere in revision is shut out. *and Allsop, JJ.*) ASHRAF v. SAITH MAL. I.L.R. 1938 All. 110 = 1938 R.D. 79 = 1938 A.L.R. 92 = 173 I.C. 136 = 10 R.A. 462 = 1937 A.W.R. 1081 = 1937 A L J. 1101 = A I R 1938 All 47

J. M) SUKHNANDAN v. NURUL HASAN 1938 O.W.N. 1071 = 1938 R.D. 820.

-**S. 46 and C. P. Code, S. 115**—*Distinction*

revisional powers contained in S. 46 of the Provinces Encumbered Estates Act, of calling records, relate only to proceedings in a case under t pending in a Court, that is to say, the Act does ovide such wide powers of revision as is provided

r S. 6— f Board

If the Collector unwittingly gives the protecti the United Provinces Encumbered Estates making orders under S. 6, to persons who

tled to such protection, it is the duty of the Board of

ESTATES ACT, SS. 4, 6 AND 46. 1938 R.D. 736.

UNITED PROVINCES LAND REVENUE ACT (III OF 1901)—*Partition—Co-sharer purchasing tenant's grove—Right to be allotted that plot over and above share at partition—Proper course.*

A co-sharer who purchases a tenant's grove is not entitled to be given that plot over and above his share at a partition; he is entitled to his share in the *sir* and *khudkasht*, etc., under partition, while he would get so much of the grove in his patti as proprietor as represents his share of the tenant's grove, and for the rest of the portion which goes to other co sharers he would remain groveholder. (*Darling, S.M. and Bomford, J.M.*) SIDHGOPAL *v* CHANDRA KISHORE.
1937 A.W.R. 1210 = 1938 R.D. 11.

...pect of 116 ... in prior assessment ... should be

Where a talaqdar claims the privilege of executing a single engagement in respect of the land revenue for 116

S. 4 (4) of the U. P. Land Revenue Act. (*Darling, S.M.*) BIRENDRA BIKRAM SINGH *v.* EMPEROR.
1938 O.W.N. 1115 = 1938 R.D. 842

——**S 4 (16)**—*'Sub proprietor'—Sirdar not exercising any proprietary rights*

and Bomford, J. M.) GATSARAN NARAINJI *v.* RAM SINGH **1938 R.D. 565 = 1938 A.W.R. (B.R.) 307.**

——**Ss. 4 (16) and 39**—*Sub-proprietorship—Claim as to—Establishment—Method—Forum.*

ter. (*Darling, S.M. and Bomford, J.M*) MOHAMMAD *v.* MAHARAJA OF NAHAN.
1938 A.L.J. (Supp) 24 = 1938 A.W.R. (B.R.) 147 = 1938 R.D. 289.

——**S. 23**—*Acceptance of resignation tendered by*

not be re appointed again. (*Darling, S.M. ...mford, J.M.*) CHAUHARJA PRASAD *v.* EM-
1937 R.D. 446.

——**S. 23**—*Scope of—Transfer of patwari on ground of illicit cultivation—Propriety—Procedure to be followed.*

The transfer of a patwari under S. 23 of the U. P. Land Revenue Act cannot be used as a punishment. Where a patwari is alleged to have carried on illicit cultivation, the proper procedure is to have framed charges and the patwari called on to show cause why he should not be punished even if need be by dismissal. Transfer is not a recognized form of punishment. (*Darling, S.M. and Bomford, J.M.*) MASHUQ ALI *v.* OUDH NARAIN.
1938 R.D 437 = 1938 A.W.R. (B.R.) 281.

——**S. 23 (2) (c)**—*Hostility between patwari and one Zamindar of his circle—If sufficient reason for transfer.*

Hostility between the patwari and one Zamindar of his circle is not a sufficient reason for the transfer of the patwari when the other co-sharers have at least not complained against the man. (*Darling, S.M. and Bomford, J.M*) SURAJ BANSI LAL *v.* BISHWA NATH CHAKRAWARTI. **1937 R.D. 447.**

S.M and Bomford, J.M.) SHYAM BEHARI LAL *v.* EMPEROR. **1938 A.W.R. (B.R.) 100 = 1938 R.D. 164.**

——**S. 23 (6)**—*Notice to some lambardars only—Validity.*

...otice can be sent under S. 23 ... Land Revenue Act, to some ... to others calling for nomina... *...ing, S.M. and Bomford, J.M.*) ...LKA SINGH.
1938 R.D. 128 = 1938 A.W.R. 78 (B.R.).

——**S. 24**—*Appeal—Appointment of patwari—Disappointed candidate—If can appeal.*

being perfectly suitable—Rejection as being tenant and co sharer—If justified.

U. P. LAND REVENUE ACT (1901), S. 24.

The candidate who gets the majority of votes of the lambardars and who is perfectly suitable in the light of the orders of the Board of Revenue ought to be appointed as patwari. He should not be rejected because he is a tenant and co-sharer. (*Darling, S.M. and Bomford, J.M.*) NAWRANG SINGH v. KALKA SINGH.
1938 R.D. 128 = 1938 A.W.R. 78 (B.R.).

—— S. 24 (1)—*Nomination of patwari—Lambardar's right to change his mind—Nomination before notice calling for same—Subsequent receipt of notice—Second nomination—Validity.*

A nominator can always change his mind if the Collector calls for a fresh nomination. Where a lambardar nominates a candidate before any nominations are called for, but on receipt of notice calling for nominations nominates another, he must be held to his original nomination because there is no question of calling for fresh nominations in such a case. (*Darling, S.M. and Bomford, J.M.*) NAWRANG SINGH v. KALKA SINGH. 1938 R.D. 128 = 1938 A.W.R. 78 (B.R.).

———S. 24 (1)—*Nomination of patwari—Personal attestation by lambardar before Collector—If essential—Nomination not personally attested—If not duly made—Second nomination—If can be called for.*

The Land Revenue Act only lays down that a lambardar must nominate, there is nothing in the Act which requires that the lambardars must attest their nominations before the Collector. A nomination which is not personally attested is not therefore to be regarded as not having been duly made so as to
excuse for giving a second nomination
nation ought to be discouraged except in
notice served on the lambardars inviting
tions. (*Darling, S.M. and Bomford, J.*
SINGH v. KALKA SINGH 1938 R.D. 128 = 1938 A.W.R. 78 (B.R.)

———S. 24 (1)—*Right of nomination of patwari—Lambardars named in khewat but not named in register or list of mahals under S. 31 (b)—Right of—Proof of due appointment as lambardars—Necessity*

paying mahals or both But it must be shown that all the persons named in the khewat are proper lambardars, *i.e.*, that they have been appointed in accordance with the Act. When the list of mahals shows the names of lambardars with date of order of appointment but the entries in the khewat do not give this information, there being difference between the two lists, it is for the lambardars who are not given in the list of mahals to show that they were duly appointed. *Darling, S.M. and Bomford, J.M.*) NAWRANG SINGH v. KALKA SINGH
1938 R.D. 128 = 1938 A.W.R. 78 (B.R.)

———S. 32—*Person holding land on rent in lieu of guzara—Status of*

The status of a person holding land on payment of rent in lieu of her guzara is that of a statutory tenant and should be recorded as such in the *khatauni* (*Darling, S.M. and Bomford, J.M.*) RAJESHWARI KUER v. MAN SINGH 1937 R.D. 695

———S. 32—*Record of rights—Revision—Duty of Revenue Courts*

Where a record of rights is prepared at a revision of the records, the Revenue Courts are concerned only with the preparation of a register containing the details required by S. 32 of the U. P. Land Revenue Act. Any question as to whether the recorded co-sharers as a whole and their transferees have acquired any rights by prescription or not, is not for the Revenue Courts to decide. (*Drake Brockman, S.M. and Knox, J.M.*) JADUNATH SINGH v. MUHAMMAD AHMAD ALI KHAN 1938 R.D. 591 (2) = 1938 A.W.R. (B.R.) 329 (2)

U. P. LAND REVENUE ACT (1901), S. 33.

———Ss. 33 and 42—*Correction cases—Abuses of—Correction, when justified—Other remedies open.*

Under S. 33 of the Land Revenue Act, a correction of the papers is justified only either by some change or clerical error It should be realized that correction cases are not to be used for those purposes for which other remedies by way of regular suits have been provided elsewhere. Where an unrecorded tenant desires to have his name recorded as co-tenant in an occupancy holding it is his obvious duty either to apply under S. 37 or S. 123 of the Agra Tenancy Act as the case may be having reference to the quarter from which the objection is apprehended In such a case he cannot apply for correction of papers under Ss 33 and 42 of the Land Revenue Act (*Darling, S.M. and Bomford, J.M.*) BASHIR AHMAD v. MOHAMMAD ALI.
1938 R.D. 73 = 1938 A.W.R. 19 (B.R.).

———S. 33—*Correction of errors—Scope of power—Error continuing through three settlements—Proper remedy.*

S 33 (2) of the United Provinces Land Revenue Act does not contemplate an error which has stood through three settlements from 1870 Rights recorded over a long period of years cannot be modified, much less

1938 R.D. 863 = 1938 A.W.R. (B.R.) 296.

———Ss 33 and 39—*Entry of long standing—Correction—If proper remedy*

Where an entry had stood the test of 42 years since the regular settlement, cannot be corrected, on the ground
ttlement, through the
33 and the following
A claim to occu-
mily in an occupancy
another branch only
can only be established by a regular suit under the Tenancy Act Before an application under S 39 of the Land Revenue Act is admitted, the real points to consider are whether there is an error to correct or change the record (*Darling, S.M. and Bomford, J.M.*) PIRBHU v. PARTAP SINGH. 1938 A.L.J. (Supp) 26 = 1938 R.D. 418 = 1938 A.W.R. (B.R.) 178.

———S 33—Rejection of mutation—Subsequent application for correction, if justified *See* U. P. LAND REVENUE ACT, SS 34 AND 33.
1938 R.D. 239

———S 33 (2)—*Applicability—Refusal of mutation—Fresh application—Ordering of mutation—If an error, to be corrected*

Where an application for mutation has been rejected on the ground that the applicant was not in possession, and the applicant on a subsequent application to the Tasildar obtains an *ex parte* order for mutation, it certainly is an error within the meaning of Cl (2) of S 33 of the Land Revenue Act which should be corrected. (*Darling, S.M. and Bomford, J.M.*) VIDYAWATI v. KUNJ BIHARILAL 1938 A.W.R. (B.R.) 136 = 1938 R.D. 266.

———S. 33 (2)—*Correction of papers—Application for, when justified—Entry based on order of Record Officer—Proper remedy*

U. P. LAND REVENUE ACT (1901), S. 33.

An application under S. 33 of the U. P. Land Revenue

P. Land Revenue Act. (*Darling, S.M. and Mehta, J.M.*) DALLOO *v* PHULA. 1938 R D. 733= 1938 A.W.R (B R) 374.

——S. 33 (2)—*Correction—Scope of—Application on strength of transaction long anterior in date—If can be granted—Establishment of title in Civil Court—Necessity—Time for application.*

Where correction of the khewat is asked for on the

BAHADUR SINGH *v.* ACHH

1938 O.W.N. 283 =

——Ss 34, 38 and 39—*Applicability—Thekka lease for term—Expiry of—Application by zamindar for removal of name of thekkadar—Liability to fine under S. 38—"Re-transfer."*

Where a zamindar grants a thekka of a village for a certain period, there is no doubt a transfer within the meaning of S. 34 of the U. P. Land Revenue Act when the thekkadar is put in possession. But there is no transfer under the section on the expiry of the lease. An application by the zamindar after the expiry of the thekka lease for removal of the name of the thekkadar is a proceeding under S. 39 of the Act, and consequently no fine is leviable from the zamindar in respect of the same under S. 38 (*Darling, S.M and Bomford, J.M.*) ADITYA NARAIN SINGH BAHADUR *v.* EMPEROR.

1938 A.W.R. (B R.) 107=1938 R.D. 172

——S. 34—*Mutation—Right to—Possession on the basis of decree of Civil Court—Effect of pending appeal against decree of Civil Court.*

Where a party has obtained possession because of a decree of Civil Court, clearly on that basis he is entitled to mutation, though an appeal may have been preferred against the decree of the Civil Court. So long as he is

-eversal of Civil

rights are un

, M) SHAMBU

R D 591 (1)=

1938 A.W.R. (B R)302=1938 A L J. (Supp) 130.

——S. 34—*Mutation on strength of family settlement—Dispute as to settlement—Declaration from Civil—Necessity.*

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frc

in dispute as against the other members (*Darling, S. M. and Bomford, J.M*) LACHHMAN PATHAK *v* LAKHPAT PATHAK. 1938 R.D 451= 1938 A.W.R. (B R.) 314.

U. P. LAND REVENUE ACT (1901), S. 34.

——S. 34—*Mutation proceedings—Widow in posses-*

claims to hold the

d dower debt, the

ntitled to mutation.

e opposite party to

. The mere obtain-

the opposite party would not be of any avail to them, for as it is clear from S. 387 of the Succession Act, the value of the certificate in proving title is nil. (*Darling S.M. and Bomford, J.M.*) RAHMAT ULLAH *v.* SALEHA BIBI.

1938 R.D. 42=1938 A.W R. 21 (B R.).

——Ss. 34 and 33—*Mutation—Rejection of application of alleged vendee—Vendee if can apply for correction or oppose application for mutation by heirs of*

by an alleged

to him later on,

or correction of

mutation by the

successful party

cast on them by

S M. and Bomford, J.M.) GIRJA DAYAL *v.* TOKKEY SINGH. 1938 A.W.R. (B.R.) 130=1938 R D. 239.

——S. 34—*Mutation—Right to—Compromise decree among claimants—Possession of half and right to resume possession of the other half of the property on the death of a lady—Death of the lady—Right to ask for mutation on strength of partial possession.*

Where in settlement of disputes between the daughter's son and daughter in-law a compromise decree was passed by which the grandson was put in possession of half the property, with a right to get the other half on the death of the daughter-in law, and mutation was accordingly made, on the death of the daughter in law the grandson can on the strength of the decree obtain mutation at the hands of the Revenue Courts under S. 34 of the Land Revenue Act, in respect of the whole property. (*Darling, S.M. and Bomford, J. M.*) RUDRA PRATAP SINAH *v.* BANS BAHADUR SINGH.

1938 O.W N. 576=1938 R D. 553= 1938 A W.R. (B R) 250.

——S 34—*Transfer in respect of which mutation can be effected.*

Mutation can only be effected in favour of a transfer in respect of actual proprietary or other rights, such as under proprietary rights in a mahal. (*Darling, S.M. and Bomford, J M.*) JANG BAHADUR SINGH *v* SHEO PARTAB SINGH. 1937 R.D. 588.

——S. 34 (5)—*Objection—Plea that mortgagees of specific plots of sir are not entitled to sue in ejectment—If can be raised for first time in appeal.*

Though a point of law can be taken at any time, a

and fact cannot be so raised in

, mortgagees of specific plots of

tered in the khewat, and a plea

Land Revenue Act to the effect

that such mortgagees, not having been shown in the khewat, were not entitled to sue in ejectment cannot be raised for the first time in appeal, as it involves a question of fact. (*Bomford, J.M.*) KARHARI DUSADH *v.*

SITA RAM LOHAR, [illegible]

——S. 34, Expl.—*Family s*[illegible] *Appointment of arbitrators to se*[illegible] *Taking of respective shares by* [illegible] *Award—Application for mutation—Absence of formal 'dakhal' by Civil Court in favour of applicant—If renders application incompetent.*

[illegible] 'family settlement' occurring in the Expl. [illegible] an arrangement is a family settlement. Where one of the members applies for mutation under S. 34 of the Act, the point for consideration is whether the award has been acted upon. The finding of the High Court, that [illegible] in possession in pursuance [illegible] Cour [illegible] poses of an application [illegible] and Bomford, J M) LACHHMI SEWAK SAHU *v.* GAYA PRASAD 1938 R.D 443= 1938 A W R (B R) 344

——S. 35—*Scope of—Disputed mutation case—Powers of Tahsildar to decide.*

Under the second paragrapl [illegible] Provinces Land Revenue Act, mutation case is beyond the [illegible] (*Darling, S. M. and Boml* [illegible] UPADHYA *v.* PARBHU NATH. 1938 O.W.N. 487=193[illegible]

[illegible] the Oudh Rent Act as amended in 1922 (*Darling, S.M*) BINDESHWARI MISIR *v.* BAIJNATH PANDE 1938 A W R (B R) 104=1938 R D 168

——S 36—*Claim to ex-proprietary rights in* khud kasht [illegible] *officer* [illegible]

A [illegible] S 36 [illegible] reaso [illegible] made [illegible] was [illegible] poses [illegible] on the part of [illegible] ment of a regular claim under S 36. (*Darling, S.M.*) BHOLI *v* CHHAJJU SINGH 1938 A.W R (B R.) 125=1938 R D. 199.

——S 36—*Proprietor executing mortgage and waiving rights under S 15 (5) of the Tenancy Act—Entries how to be made*

Where a mortgagor [illegible] states that he has hand[illegible] gagees, he waives his [illegible] under S 15 (5) of the [illegible] the mortgage within 12 [illegible] recognised in the paper[illegible] *J M*) GHURAN PANDEY *v* HIRA LAL 1938 R D. 391=1938 A L J (Supp) 52= 1938 A W.R (B R) 223

——S. 36—*Scope—Agreement fixing rent in contravention of S. 14, Agra Tenancy Act—Compromise order*

[illegible] the Agra Tenancy Act is void. An order passed in proceedings under S. 36 of the U. P. Land Revenue Act based on such an agreement of compromise is not a proper order on which a suit for arrears of rent can be [illegible] (*Bennet J*) SUCHIT CHAUBE *v.* BALDEO 173 I C. 425=1938 R.D. 47= 1938 A L R 137=1937 A W R. 1161= 1937 A.L J. 1284=10 R.A. 482= A I.R 1938 All 74.

——S. 39—Application under, for establishing claim to sub-proprietorship—If proper method *See* U. P. LAND REVENUE ACT, SS. 4 (16) AND 39 1938 R D. 289.

——S 39—Application under—Points to be considered *See* U P. LAND REVENUE [illegible] 1938 A L J (Supp.) 26.

[illegible] *sections—Resort to—Long drawn out disputes—Decision of question of rights—If open—Claim to be recorded as joint occupancy tenant—Proper procedure.*

The correction sections of the U P. Land Revenue Act are not to be used for the settlement of long drawn out disputes. Where the entries in the papers are of [illegible] a person is [illegible] same Act [illegible] having [illegible] jection is [illegible] *d, J.M.*) [illegible] D. 244.

[illegible] S 42 —*Test to find out.*

Neither a deciding officer nor the contending parties can convert a case into one under S 42 of the U P. Land Revenue Act It is the pleading alone that will [illegible]

[illegible] *lessee under farzi lease—Lessor found not to have lost possession—Right to restoration of entry—Lessee's remedy—Suit under S 123 or S 99 of the Agra Tenancy Act.*

Where a lease is found to be *farzi*, a lessor who has never lost possession, is entitled to ask for expunction of [illegible] NIADAR 1938 A W R (B.R.) 157=1938 R D. 253.

—— Ss 39 227 and 228—*Jurisdiction—Correction case transferred by Sub Divisional Officer to Honorary Assistant Collector—Competency of latter to hear and dispose of.*

U. P. LAND REVENUE ACT (1901), S. 39, -

Under S. 227 of the U. P Land Revenue Act only an Assistant Collector in charge of a sub-division has the powers of a Collector under S 39, and under S. 228, an

but the powers which the Collector can exercise under S 228. An to hear and nsferred to competent *S.M and* ' CHAMAR 1938 R D. 160=1938 A.W.R (B R) 91.

——S 39—*Scope of—Award of exproprietary rights by order of Court—Summary proceedings under S. 39, if can be availed of to abrogate such rights.*

In summary proceedings under S. 39, of the Land Revenue Act the ex proprietary rights formally awarded by a decree of Court, cannot be abrogated. The proper procedure would be to retain the names of the exproprietary tenant in the *khataunt* until it is established by a regular suit under the Tenancy Act that they have lost their rights. (*Darling, S.M, and Bomford, J M.*) MALKHAN *v.* ASA RAM. 1938 R.D. 192= 1938 A L J (Supp) 11=1938 A.W.R 57 (B R).

——S. 39—*Scope of—Partition of Court effected by parties—Application for change of entries in* khewat

ed and after making such a partition out of Court, come to the Revenue Court and get the same entered in the papers by the back door of a correction case under S. 39 of the Act. Such case of correcting errors as of transaction that has taken place interests of parties. There is the *khewat* under S 39 if the changes based on possession *khataunt* only if they do not involve questions involving long drawn out disputes The Court under S. 39 cannot be asked to record changes in the proprietary sections into which the *khataunt* is divided, which can only be done at partition. If the parties want entries to be recorded in accordance with their deed of private partition, they must go the Civil Court and get the validity of the deed confirmed first, before the application can be entertained (*Darling, S M and Bomford, J. M.*) BIKARMAJIT NARAIN SAHI *v.* RANJEET NARAIN SAHI. 1937 A W.R 1207=1938 R D 7

——S. 41—*Applicability—Boundary dispute as to plots in abadi—Proper remedy*

Where the dispute is about the boundaries of plots in an abadi, the Revenue Courts have not the least interest or concern in such matters. S. 41 of the Land Revenue Act was never intended for such cases, and parties should be referred to a Civil Court in the first instance, (*Darling, S M. and Bomford, J M.*) BRIJ MOHAN *v.* ANANT LAL 1938 R D 537= 1938 A L J (Supp) 68=1938 A.W R (B R) 242.

——S. 42—*Applicability—Dispute only as to whether a party is a tenant and not as to his status.*

Where the only question is as to whether a party is a tenant at all and there is no dispute as to his status as a tenant, S 42 of the U. P. Land Revenue Act does not apply to such a case. (*Darling, S.M. and Bomford,*

U. P. LAND REVENUE ACT (1901), S. 56.

J.M.) RAJ BAHADUR *v.* RAM KISHORI. 1938 A.W.R. (B R) 134=1938 R D 244.

——S. 42—*Decision under—If bars later suit under Tenancy Act.*

dings under S. 42 of the U. P. Land ainst the landlord, the status of the decided to be that of an occupancy d cannot later on in proceedings under S. 121 of the Agra Tenancy Act assert that the tenant has no *locus standi*. He is estopped from doing it. (*Darling, S.M and Mehta, J M.*) BASHIRAN BIBI *v.* SAHEBZAD KHAN 1938 R D. 837.

——S. 42—Decision under—If *res judicata*—Suit under S. 121—Bar. *See* C. P. CODE, S. 11. 1938 R.D. 132.

——S 42—*Scope.*

S. 42 only comes into force when proceedings have been started under S 33. It is not an alternative for proceedings under the declaration sections. If as a result of a change it is necessary to alter the status of a recorded and an admitted tenant then indeed the procedure has to be under S 42 But this procedure cannot be used to decide cases which can only be decided by regular suits (*Darling, S.M. and Bomford, J.M.*) MUNNI SARAN TEWARI *v.* DRIGPAL LOHAR. 1937 R D. 450.

——S. 42—*Scope—Dispute as to status of person admitted as tenant—Proceedings under Act—Propriety in the absence of any change or clerical error.*

A dispute as to the status of a person admitted as a tenant has to be decided under the U. P. Land Revenue Act according to S. 42 of that Act. Though there has been no change and no clerical error justifying proceedings under the Act, it may be tried under the Land Revenue Act. (*Bomford, J M*) DULARA *v* NARAIN SINGH. 1937 A W.R. 1213=1938 O.W N. 27= 1938 R D. 18.

——S. 43—*Scope—Correction of rent—Duty of*

year, unless of course there has been formal enhancement or abatement in accordance with the law. (*Darling, S. M and Bomford, J M*) GANPAT RAI *v* DULE 1938 A L J (Supp.) 35= 1938 R D 484=1938 A.W R (B R) 226.

——Ss 45 and 197—*Limitation for nomination of lambardar—Starting point.*

The period of one month prescribed in S. 45 (2) of the U. P Land Revenue Act with reference to the nomination of a lambardar has to be calculated from the date of the last proclamation made in accordance with S. 197 of the Act and not from the date when such proclamation is signed, for a proclamation is no proclamation until proclaimed, (*Darling S.M. and Mehta J M.*) SHAMBHU NATH *v.* DAMMAMAL 1938 R D 859= 1938 A W R. (B R) 385.

——S 45—*Plot proprietor—If a co-sharer 'of' the mahal.*

Any identification of a plot proprietor with a co-sharer 'of' a mahal so far as S 45 of the Land Revenue Act is concerned, is based on a misinterpretation of S 142 of the Act (*Darling, S M and Bomford, J.M.*) RAHMAT ULLAH MIAN *v.* RAM KISHORE MISRA. 1938 R D 74=1938 A W R 6 (B.R.)= 1938 O A 172=1938 O.W N. 792.

——S. 56—'Nadhwana', if a cess *See* AGRA TENANCY ACT, S. 132. 1938 A.W.R. 38 (B R).

U. P. LAND REVENUE ACT (1901), S. 79.

——S 79—Holding governed by—Rent, if liable to enhancement by suit under Ss. 33 and 35 of Oudh Rent Act. *See* OUDH RENT ACT, SS. 33 AND 35. 1938 R D. 403

——S. 86—'Nadhwana', if a cess. *See* AGRA TENANCY ACT, S. 132. 1938 A.W R. 38 (R R.)

——S. 101—*Claim for reduction of under-proprietary rent owing to reduction in revenue—Procedure to enforce—If can be pleaded in defence in a suit for arrears.*

There is a specific procedure provided by S. 101 of the U. P. Land Revenue Act with regard to claims for reduction of under-proprietary rent based on reduction of revenue, and only the Collector is conferred jurisdiction in the matter. As such, a claim of this nature cannot be set up as a defence to a su... rent in a revenue Court, by one who himself of the remedy under S 101 ... MOHAMMAD EJAZ RAZUL KHAN v MATA BIN 1938 O W N 1124 = 1938 O A 910 = 1938 R D 891 = 1938 A W R. (B C) 137

——S 106—*'Partition'—Meaning of.*

The word 'partition' is not used in the narrow sense of mere arrangement into units of area. It imports and includes that rights in these units are distributed among the sharers (*Sir George Rankin*) BAJRANG BAHADUR SINGH v BENI MADHO BAKHSH SINGH. 175 I C 775 = 1938 A W R. (P C) 151 = 13 Luck 508 = 1938 R D 606 = 1938 O W N. 606 = 68 C.L J 193 = 1938 O A. 529 = 11 R P C 17 = 1938 O L R 321 = 1938 A L J. 786 = 1938 A L R 558 = 4 B R 713 = A.I.R. 1938 P C. 210 = (1938) 2 M L J 596 (P C).

——S. 106—*Perfect or imperfect partition—Test*

Where there is division into different pattis and thoks ... mokammal" or perfect pattidari is not at all the same thing as saying that there was a perfect partition (*Bennet and Varma JJ*) CHANDRA JANG SINGH v. SITA RAM. 1938 A L J 641 = 177 I C 123 = 11 R A 168 = 1938 R D 702 = 1938 A L R 706 = 1938 A.W.R (H C) 382 = A I R 1938 All 469

——S 107—*Application for imperfect partition—Village suffering from serious fluvial action—Duty of partition officers.*

Where a village is admittedly suffering seriously from fluvial action, an application for an imperfect partition in respect of such a village ought never to be entertained at all (*Darling, S M. and Bomford, J M*) RAM NATH v. KANHAIYA LAL 1938 R D 28 = 1938 A W R. 25 (B R)

——S. 109—*Scope and effect of—Claim—When can be made*

Under S 109 of the U P. Land Revenue Act any party to a partition can apply to have the partition quashed up to the date of the confirmation of partition Any co sharer is legally entitled to put in a claim under S. 109 at the last possible moment (*Darling, S M and Bomford, J M*) RAM NATH v KANHAIYA LAL 1938 R D 28 = 1938 A W R 25 (B R)

——S 110—*Proclamation—Duty to issue, if on partition officer*

A partition officer who knows that the issue of a proclamation is a very important matter and that it requires his personal attention, ought not to entrust it to the partition *ahlmad*. (*Darling, S.M. and Bomford, J.M*)

U. P. LAND REVENUE ACT (1901), S. 218.

ANMOL SINGH v. AMAR BAHADUR SINGH. 1938 R.D. 369 = 1938 A L J (Supp.) 42 = 1938 A W R. (B R.) 201.

——S. 110 (2)—*Application to join in partition—Expiry of limitation—If can be allowed—Fresh proceedings—Desirability*

It would be a very dangerous precedent to allow parties to apply to join in the partition after the expiry of the statutory period. In such cases fresh proceedings should start. (*Darling, S M. and Bomford, J.M.*) ANMOL SINGH v. AMAR BAHADUR SINGH. 1938 R D 369 = 1938 A.L J (Supp.) 42 = 1938 A.W R (B.R.) 201.

——S. 117—*Applicability—Absence of any interest outside his thok—Right to share in lands in other thoks.*

... in the khewats as the ... pertaining to his thok ... thok, he is not the holder of land in common with the owners of other thoks and hence he cannot get any share of any lands recorded in other thoks. (*Bennet and Varma, JJ*) CHANDRA JANG SINGH v SITA RAM. 1938 A L J 641 = 177 I.C 123 = 1938 R D 702 = 11 R A 168 = 1938 A L R 706 = 1938 A W R (H C) 382 = A I R 1938 All 469.

——S. 121—Suit under—Prior decision under S 42—If a bar. *See* C. P CODE, S. 11 1938 R D 133.

——S. 126—*Partition—Allotment of sir, to different co-sharer—Ex-proprietary rights—Conditions necessary to give rise to—Land let to tenants—If 'held'*

According to S. 126 of the United Provinces Land Revenue Act, if ex proprietary rights are to arise in *sir* land which falls in the lot of another co sharer at a partition, then it is essential that this *sir* land should be actually held by the party claiming ex proprietary rights ... continue to cultivate it after ... nts cannot be said to be 'held' ... his section So long as the ... is not possible for the co-sharer to cultivate this area after partition (*Darling, S. M*) MAHOMED HASAN KHAN v MAHOMED AHMAD KHAN. 1938 R D. 759 = 1938 A.W R. (B R) 382.

——S 146—*Applicability—Recovery of arrears of rent in respect of military land.*

All arrears of rent for military land in any cantonment area, are recoverable as arrears of land revenue and may be realized by the Collector under S 146 of the Land Revenue Act (*Darling S M and Marsh, J M.*) SECRETARY OF STATE v RAM NATH SINGH 1938 R D 798.

——S 201—*Applicability—Question of title—Ex parte order of Revenue Court under S 111—Appeal.*

S. 201 U P. Land Revenue Act, is not applicable to an *ex parte* decision on a question of title under S 111 of the Act by a Revenue Court (*Darling, S M and Bomford, J M*) SIDHGOPAL v CHANDRA KISHORE. 1937 A W R 1210 = 1938 R D. 11.

——S 213—*Third appeal—Legal point—Necessity.*

To bring a third appeal within the range of S 213 of the United Provinces Land Revenue Act, it must involve a legal point. Where in partition proceedings two rival schemes were before the Court and the two lower appellate Courts have accepted one of them, there is no legal point involved and a third appeal would have to be dismissed (*Darling, S. M.*) SRIPAL SINGH v. MANSA DIN 1938 R D 756 = 1938 A W R (B R.) 381.

——Ss 218 and 34—*Mutation proceedings—Order based on compromise—One of parties subsequently d*

ing genuineness of compromise—Board's power to revise order.

Where in a mutation proceeding an order was passed in terms of a compromise filed on behalf of the parties but one of the parties subsequently appeared and stated that she had signed a blank paper and knew nothing of the terms of the compromise, and there was great justification for regarding the proceedings of the opposite party with great suspicion, the Assistant Collector should bring the case to the notice of the Board which can exercise its powers of revision under S. 218 of the Land Revenue Act. (*Darling, S.M and Bomford, J.M.*) BHAWANI PRASAD *v.* JANAK KISHORI.

1937 R D. 593.

——S. 218—*Reference—Absence of illegality or impropriety—If justified.*

In the absence of any illegality or impropriety in the order passed, a Commissioner would not be justified in referring the case to the Board of Revenue under S. 218 of the Land Revenue Act. (*Darling, S. M. and Marsh, J. M.*) RAM RAN VIJAI PRASAD SINGH *v.* RAM SIDH. 1938 R.D. 625=

1938 A W.R. (B.R.) 297=1938 A.L J. (Supp.) 106.

——S. 220—*Review—Who can exercise power of.*

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1938 A W.R. (B.R.) 297=1938 A L J. (Supp) 106.

——S 233 (k)—*Applicability—Suit for partition of house—Agricultural land also attached to it Forum—Determining factor.*

Where a suit was for partition of a house situated in

1938 R.D. 727=1938 A.L R. 622=
11 R A. 119=1938 A L J. 513=
A.I R 1938 All 391

——S. 233 (k)—*Partition proceedings—No objection under S.* 111—*Principle of* res judicata, *if applies.*

The principle of *res judicata* will not apply where no objection was made under S. 111 with the result that Ss. 111 and 112 do not come into operation. In such a case the partition proceeds upon the entries in the khewat: the Collector does not function as a Civil does not have in that or any other capacity to to its correctness expressly or implicitly. To the right to a decision from the Civil Court is the mere fact that

1938

1938 A L R 55

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——S. 233 (k)—*Q... tition proceedings—Partition completed—Question, if can be raised in Civil Court.*

If a question of title affecting the partition which might have been raised in the partition proceedings is not so raised and the partition is completed, S. 233 (*k*) debars parties to the partition from raising the question subsequently in a Civil Court. It cannot be said that the only thing excluded from the cognizance of the Civil Court by Cl. (*k*) is the schematic arrangement of the land into units of area and that no question or proprietary right comes within the prohibition of access to the Civil Court. (*Sir George Rankin*) BAJRANG BAHADUR SINGH *v.* BENI MADHO BAKHSH SINGH.

13 Luck 508=1938 R D 606=1938 O W.N. 606=
1938 O A. 529=11 R P.C 17=1938 O L R. 321=
1938 A.L.J. 786=1938 A.L R 558=
4 B R 713=68 C L J. 193=
175 I C. 775=1938 A.W R (P C) 151=
A I R. 1938 P C. 210=(1938) 2 M L J. 596 (P.C.)

——S 233 (k)—*"With respect to partition."*

A suit is brought with respect to the partition if it is brought to impugn the distribution which by partition has been effected under the Act. (*Sir George Rankin.*) BAJRANG BAHADUR SINGH *v.* BENI MADHO BAKHSH SINGH. 13 Luck. 508=1938 R D. 606=
1938 O.W N. 606=1938 O A. 529=11 R.P.C. 17=
1938 O L R 321=1938 A.L.J. 786=
1938 A L R. 558=4 B R 713=68 C L.J 193=
A.W R (P C) 151=
M L J 596 (P C.).

GOVERNMENT

Cl. 9 (f)—*Applicability—Ex-proprietary tenants whose rent is fixed by Court.*

Cl. 9 (*f*) of the Revenue (B) Department Resolution of the Local Government No. 4308-1 B (1932) applies only to those tenants who obtained land from the zamindar in

177 I.C. 61=11 R O. 14=
38 O W.N 739=1938 O.A. 591=1938 D.R. 717=
1938 A W R. (C.C.) 72=1938 O L.R. 367=
A I.R. 1938 Oudh 204.

U. P. LOCAL RATES ACT, (1914) S. 8—*Computation of local rate payable—Rural police rate shown to be recoverable from under proprietor*

Where according to the revenue papers, the rural police rate payable under the U. P. Local and Rural Police Rates Act of 1906 in respect of the land in question is shown to be recoverable from the under proprietor, they are liable to pay the rate not only at the rate mentioned in the first part of S 8 of the U. P Local Rates Act but also according to that mentioned in Cl.

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A.L.R. 817=
38 All 571.

TIES ACT (II OF 1916), Ss 3, Cl (1) (a) and 337 (1)—*Municipal area and notified area—Distinction between.*

The case of a municipal area is different from that of a notified area. The distinction is this, that while an

U. P. MUNICIPALITIES ACT (1916), S. 74.

dismiss municipal servants—Suit for damages in Civil Court for dismissal—Maintainability—Rules under S. 77 (1) (b)—Contravention of—Effect—Remedy of aggrieved persons

The chairman of a Mu dismiss certain class of P. Municipalities Act, and no executive officer, the

1937 A.W R. 1166=1937 A.L J 1227= A I R. 1938 All. 57.

——S. 77 (1) (b)—Rules framed under—Force of—Non-compliance—Effect—Suit in Civil Court for damages by servants dismissed under Ss. 74 and 76—Maintainability *See* U P MUNICIPALITIES ACT, SS 74 AND 76 1937 A W R. 1166=1937 A L J 1227= A I.R. 1938 All. 57.

——S. 116 (b)—*Applicability—Well dedicated to public for specific purposes—If vests in municipality.*

been dedicated to the public (*Bennet, A C J.* and

management'—Trust in existence before constitution of the Municipality—If covered by

It is much too narrow a meaning to give to the

MAN LAL *v* ZAHURUDDIN I L R (1938) All. 814=1938 A L R 812= 178 I C 89 =1938 A W R (H C) 561= 1938 A L J 901=A I R 1938 All. 548.

——S 128 (1) (ix)—*Liability to tax under—Pay office of a bank—If entitled to a deduction for interest paid to Branch office.*

With regard to the assessment of tax under S. 128 (1) (ix) of the U. P. Municipalities Act of a pay office of a

U. P. MUNICIPALITIES ACT(1916), S. 302

——S. 186 and 307—*Notice under S 186—When can be issued—Notice before orders on application for sanction of construction—Validity—Disobedience, if an*

notice under it should be on notice of quite general

3= 2= R. 1938 Oudh 199.

confined to those depressions—Notice Board to issue

of the U P. Muni- depression caused by sorts of depressions whether natural or made otherwise. There is nothing in the section to qualify that word A Municipal Board is entitled under the section to issue a notice in respect of a natural depression as well (*Ganga Nath, J*) GOVIND DEOJI *v* MUNICIPAL BOARD OF BINDRABAN 174 I C 445=1938 A L R 273= 1937 A.W R 1203=1937 A L.J 1358= 10 R A. 7=7=A I R 1938 All 110

——S. 269—*Notice under—Right to issue—Notice issued by Medical officer—Legality*

competent to issue notices under S 269, and the notices issued by him are quite valid and legal. (*Ganga Nath. J.*) GOVIND DEOJI *v.* MUNICIPAL BOARD OF BINDRABAN 174 I C. 445=1938 A L R 273= 1937 A W R 1203=1937 A L J 1358= 10 R A 577=A I R 1938 All 110.

——S 269—*Powers under—Exercise of—Interference by Civil Court—Jurisdiction*

A Municipal Board possesses very wide powers under Act, but they are not s or in a capricious, hey are so used, they (*Ganga Nath, J.*) OARD OF BINDRABAN. 174 I C 445=1938 A L R 273= 1937 A W R 1203=1937 A L J. 1358= 10 R A. 577=A I R 1938 All. 110.

——S. 293 (2) (j) (b)—Death Register maintained under—Admissibility—Value *See* EVIDENCE ACT, SS. 35 AND 79—MUNICIPAL DEATH REGISTERS. 1938 A L.J. 238.

——S 302—*Reasonable time—Province of Court to determine—Three days—Sufficiency*

U. P. MUNICIPALITIES ACT (1919) S. 326.

It rests with the Court to determine whether the time specified in any notice is a reasonable time for the performance of the required act. It was held in this case that a period of three days fixed by a notice under S. 186 for the demolition of a wall was not a reasonable time. *(Zia-ul Hasan, J.)* KAUSILA *v.* EMPEROR.
1938 O A. 62[2] = 1938 O.L R. 373 = 177 I C. 90 = 11 R O. 24 = 39 Cr L J. 862 = 1938 A Cr.C. 84 = 1938 O W N. 833 = A I.R. 1938 Oudh 199

——S. 326—*Applicability—Notice under S. 269 issued by Medical Officer of Municipal Board—Suit to declare illegal and for injunction—Limitation.*

174 I.C. 445 = 1938 A L.R. 273 = 1937 A W R. 1203 = 1937 A L J 1358 = 10 R A. 577 = A I.R. 1938 All 110.

...m for balance ...ecessary.

... is in respect of ... done under a contract

... *—Effect of—Equity —Zamindar, if can claim right in soil in respect of notified area.*

According to S. 337 of the U. P. Municipalities Act a notification is to be made by the Government in respect a local area other than an agricultural village. The decision of the Local Government that a local area is

UNITE... ADULT... *Written with prin...*

When ... Prevention of Adulteration Act, it is not enough if he merely produces cash vouchers from the wholesale suppliers, with a printed line stating that the ghee is actual village ghee. This line cannot amount in any sense to a written warranty and the fact that the signature of the vendor appeared in the bottom of the voucher does not imply that the signature is attached to that particular line. The line in question is a mere advertisement *(Bennet, J)* EMPEROR *v.* PANCHAMRAM. I L R (1938) All 797 = 177 I C 704 = 1938 A.L R. 778 = 11 R A 217 = 39 Cr.L J 959 = 1938 A.L J. 780 = 1938 A W.R (H C) 490 = A.I R 1938 All 538.

U. P. PUBLIC GAMBLING ACT (1925), S 5.

——S. 6 (c)—*'Sold in the same state'—Proof.*

In order to substantiate a plea under S 6 (c) of the ...ct, that an accused sold the ...me state in which he pur... ...he month makes a statement ...ndent evidence in support ... *(Bennet, J)* EMPEROR 1938 A L J 780 = All 797 = 177 I C 704 = ...A 217 = 39 Cr L J 959 = ...90 = A.I R. 1938 All. 538.

——S 15—*Non-compliance with—Particulars not given in summons—It justifies acquittal—Effect of S. 537, Cr. P. Code—Requirements of summons—Sufficiency.*

There is nothing in the U. P. Prevention of Adulteration Act which justifies the conclusion that it was the intention of the legislature that a failure to give the ... 15 of the Act ...e perfectly clear ... of the offence ... his conduct. ... perfectly clear ...ies and omis... ...ith substantial ... a sample of ghee was taken from the shop of the accused and that he was prosecuted under S. 4 of the Act and that the Sanitary Inspector was the prosecutor, it contains all the particulars required by S. 15 of the Act. *(Allsop J)* HIRA LAL *v.* EMPEROR 1938 A L J. 497 = I L R. (1938) All 646 = 1938 A W R. (H C) 335 = 1938 A Cr.C 41 = 176 I C 325 = 11 R A 80 = 1938 A L R. 594 = 39 Cr L J 738 = A I.R 1938 All 395.

UNITED PROVINCES PUBLIC GAMBLING ACT (I OF 1925), S 1 (2)—*Playing cards for money*

...3 A M.L J. 51.

...Condition neces... ...in arise when

...ent is attacked, Magistrate was given ...ether the officer seeking ...icle information If the ...y because the police officer ... legal warrant under S. 5 and hence no presumption ... arise from it *(Weston, J.)* ...CHAND *v.* EMPEROR 1938 A M.L J. 13.

——S. 5—*Issue of warrant—Considerations—Duty of Magistrates.*

U. P. PUBLIC GAMBLING ACT (1925) S. 5.

It is the duty of Magistrates issuing warrants under S. 5 of the Gambling Act to satisfy themselves that there is reasonable justification for issuing warrants (*Weston*) MOHAMMAD HAYAT KHAN *v.* EMPEROR **1938 A M.L J. 51.**

——**S. 5**—*Issue of warrant—Validity—Nature of evidence to prove.*

Where in gambling cases the warrant is usually attached the police should lead evidence to show the manner in which the warrant was ob be necessary to call the officer who nor is it essential that the police s source of their information. But should be led to rebut the suggestion that the warrant was issued as a matter of routine merely at the request of a police officer, who himself was not authorised to issue a warrant. (*Weston.*) NEMI CHAND *v* EMPEROR. **1938 A M L J 40.**

——**S. 6**—Presumption under—If can arise when warrant is illegal. *See* U. P. PUBLIC GAMBLING ACT, Ss. 5 AND 6 **1938 A M L J 13**

U P REGULATION OF REMISSION ACT (1938). S. 2—*Remission of under proprietary rent owing to fall in prices—If available.*

Though rent includes under proprietary rent in the Oudh Rent Act, yet where the Local Government by its executive orders, do not appear to have contemplated a reduction of under-proprietary rent on account of a fall in prices, S. 2 of the U. P. Regulat Act, could not help a person unless any order covered by S. 2 under whic such a reduction (*Zia-ul-Hassan,* EJAZ RASOOL KHAN *v.* MATA DIN

1938 A.W R (C C) 137= 1938 O W N. 1124= 1938 O A 910= 1938 R D 891

UNITED PROVINCES REGULATION OF SALES ACT (XXVI OF 1934), S 3—*Absence of notice to Judgment debtor to his correct address—Validity of proceedings in his absence.*

Where no effort was made to serve the judgment-debtor with notice at his correct address, all proceedings taken under the Regulation of Sales Act in the absence of the judgment-debtor are defective and a fresh opportunity should be given to him to contest the valuation (*Darling S M and Bomford, J M*) TRIBENI SINGH *v* LACHHMI RAM **1938 R D 487= 1938 A W R (B R) 271**

——**S 3**—*Failure of Judgment debtor to contest valuation—Chance to reopen it in revision*

Where a Judgment debtor had a chance to contest the valuation and against which he could have appealed does not avail himself of that, he should not be given a chance of reopening it in revision, and particularly so in a case where the valuation has been made according to the rules (*Darling S M. and Bomford, J M*) BHAROSA MAL *v* JOKHA MAL **1938 R D 425= 1938 A W.R. (B R) 292**

——**S 3**—*Order accepting valuation passed in judgment debtor's absence—Judgment debtor applying for*

not be able to set aside the order passed but he could at least make a reference to the Board. (*Darling, S M.*

U P. REGUL. OF SALES ACT (1934), S 3.

and Bomford J M) RAM NANDAN BHARTI *v.* RAMLAGAN BHARTI. **1937 R.D. 582.**

——**Ss 3 and 4**—Proceedings under—Orders thereon subsequent to passing of orders under S 6 of the Encumbered Estates Act—Effect. *See* U. P. ENCUMBERED ESTATES ACT, Ss. 4 AND 6. **1938 A.W R (B R) 212.**

——**S. 3**—*Property consisting of tank—Valuation of tank.*

no doubt a rofit to the purposes of *ord, J M.*) BALMAKUND *v.* CHANGER. **1937 R D 411.**

——**S 3**—*Property valued consisting of grove—Duty to show details of trees in valuation statement.*

When the property valued consists of groves, the details of the trees valued should be shown in the valuation statement to enable the Collector or the Board in appeal to see if the valuation was approximately correct (*Darling, S M and Bomford J M*) BALMAKUND *v.* CHANGER **1937 R D 411.**

——**Ss 3 and 4** *Transfer of whole share of judgment debtor wh n 11-12ths of his share will suffice to meet decree—Propriety.*

Where owing to a wrong valuation, the whole share of a judgment debtor is transferred by the Collector when it will suffice to transfer 11/12ths of his share to meet the transfer even d the revised the judgment- the policy of Government to transfer as small an area as possible in satisfaction of decrees (*Darling S M and Bomford, J M*) MUNESHAR SINGH *v* RAM BECHAN RAI. **1937 R D 341.**

——**Ss 3 and 4**—*Transfer—Who can set aside*

An order of transfer can only be set aside by the order of the Board (*Darling, S.M and Bomford, J.M.*) SAMRAJ SINGH *v* HARI KISHUN DAS **1938 A W R (B R) 212= 1938 A L J. 71 (Supp)= 1938 R D 678.**

——**S 3**—*Valuation—Basis*—*Sir lands*

For purposes of the U. P. Regulation of Sales Act, the valuation of *Sir* lands should be made at statutory rate and not at occupancy rate (*Darling S M and Bomford, J M*) AMAN SINGH *v* RAMJI LAL **1938 R D 329= 1938 A W R (B R) 173.**

——**Ss 3 and 4**—*Valuation made—No bid—Amendment of decree by Civil Court—Forwarding of decree to Collector—Regulation of Sales Act no longer in force—Old valuation if could be retained*

Where a valuation was made under the Regulation of Sales Act and as there was no bid the file was returned to the Civil Court, and where the decree was subsequently amended and sent to the Collector once again for execution, the proceedings are to all intents the same proceedings as those commenced earlier. So though the Regulation of Sales Act was not in under the old The calculation (*Darling, S* DAN *v* UDEY R (B R) 365. be made annually their alue should be *Knox, J.M.*) RAM CHANDER *v.* ROSHAN SINGH **1937 R D. 380 (1)**

U. P. REGUL. OF SALES ACT (1934), S. 3.

——S. 3—*Valuation—Rules as to—Sir fields—Deduction from recorded rent—If justifiable*—Khattas *in possession of mortgagees—No profits shown—Calculation of value at* 50 *times land revenue—Propriety*—

[illegible]

and not on the basis of 50 times land revenue. The Act lays a duty on the Collector to determine the valuation, and not to accept any figure given by the patwari. (*Darling, S. M. and Bomford, J. M.*) FAUJDAR SINGH *v.* SUBHADRA KUER. 1933 B.D. 60 = 1933 A.W.R. 10 (B.R.).

——S. 3—*Wrong valuation—Interference by Board—Though notice served judgment-debtor not caring to appear—Transfer of property to decree-holder—Revision—Competency.*

Where though the notice to contest the valuation was served, a judgment-debtor does not care to appear and where the property is transferred to the decree-holder in satisfaction of his decree, and though the valuation was patently wrong, the Board will not interfere in revision. People who ignore the notices of Court should suffer the consequences. (*Darling, S.M. and Bomford, J.M.*) AMAN SINGH *v.* RAMJI LAL. 1933 B.D. 329 = 1933 A.W.R. (B.R.) 173.

——S. 3 (3)—*Consideration of valuation—Notice for—Service—Avoidance*—Bona fides—*Test—Considerations.*

While there is no doubt that the service of notices under the Regulation of Sales Act is often very slack and also dishonest, it is equally notorious that judgment-debtors who have no case at all try to avoid the service with a view to prolong the proceedings. Therefore if there is no *prima facie* reason for the decree-holder to attempt to get the property by dishonest means, there is the less reason to suspect the *bona fides* of the process server's report and the more reason to scrutinise the conduct of the judgment-debtor. (*Darling, S.M. and Bomford, J.M.*) RAM PALTAN MISRA *v.* BASDEO SINGH 1933 B.D. 76 = 1933 A.W.R. 32 (B.R.).

——S. 3 (3)—*Scope—Non compliance—Effect on sale—Proof of loss as a result of material irregularity—Necessity*

[illegible]

a case is not bound to prove that loss has accrued to him as a result of the material irregularity. (*Darling, S.M. and Bomford, J.M.*) CHHEDI SHUKUL *v.* SATRAM

[illegible]

cannot be allowed to re-open the matter in revision. (*Darling, S. M. and Bomford, J. M.*) PARKALI KUER *v.* RAJA RAM MALL. 1933 B.D. 485 = 1933 A.W.R. (B.R.) 285.

——S. 3 (4)—*Valuation by Assistant Collector—Appeal—Forum.*

Where the Assistant Collector makes a valuation under the Regulation of Sales Act, under S. 3 (4) of the Act an appeal against it lies to the Board of Revenue and not to the Collector. (*Darling, S.M. and Bomford, J.M.*) SHIB NANDAN *v.* UDEY RAM. 1933 B.D. 453 = 1933 A.W.R. (B.R.) 265.

[illegible]

cular amount.

Held, that it is an erroneous order and that it was the duty of the Assistant Collector in such case to transfer the property to the decree-holder in full satisfaction of his claim. (*Darling, S.M. and Bomford, J.M.*) FAUJDAR SINGH *v.* SUBHADRA KUER. 1933 B.D. 60 = 1933 A.W.R. 10 (B.R.).

——S. 4 (a)—*Valuation of land at less than decree—Right of decree-holder to take such land in part payment of decree.*

Under S. 4 (a) of the Regulation of Sales Act, the decree holder is entitled to take the land valued at less than his decree only in full discharge of his decree with its encumbrances and interest. He cannot take the land up to its valuation in part payment of his decree. (*Darling S.M. and Bomford, J.M.*) JAGDEO SINGH *v.* MAHARAJ SINGH. 1937 B.D. 587.

——S. 5—*Order transferring property—Review—Power of Collector to set aside—Proper procedure.*

A Collector has no power to set aside on review an order transferring the property to the decree-holder under S. 5 of the U. P. Regulation of Sales Act. If he thinks that it should be set aside, he should report to the Board of Revenue in revision. (*Darling, S.M. and Bomford, J.M.*) MAHABIR SINGH *v.* LALTA SINGH. 1933 B.D. 115 = 1933 A.W.R. 67 (B.R.).

——S. 5—*Order under, after presentation of application under S. 4 of the Encumbered Estates Act, but before order under S. 6—Effect—Stay under S. 7 of the Encumbered Estates Act when comes into operation.*

Where an order under S. 5 of the U. P. Regulation of Sales Act, transferring property of the judgment debtor is passed, after the presentation by such judgment-debtor of an application under S. 4 of the Encumbered Estates Act but before an order under S. 6 of the Act is passed, the order under the Regulation of Sales Act cannot be [illegible] t there was great delay in [illegible] of the Encumbered Estates [illegible] ed Estates Act cannot come [illegible] under S. 6 of the Act had [illegible] S. M. and Bomford, J. M.) KANCHAN PRASAD *v.* HANSA. 1933 B.D. 383 = 1933 A.W.R. (B.R.) 199.

——S. 5—*Review—Order of transfer—Appeal to* [illegible] *—Application to Collector for review—*

[illegible] cation for review of an order under S. 5 of [illegible] egulation of Sales Act transferring the pro[illegible] e decree-holder will lie, when an appeal [illegible] er has been preferred to the Board of [illegible] *Darling, S.M. and Bomford, J.M.*) MAHABIR SINGH *v.* LALTA SINGH. 1933 B.D. 115 = 1933 A.W.R. 67 (B.R.).

——S. 5—*Simple and later mortgage decree against same judgment debtor—Preference in order of sale, if, exists—Decree on mortgage subsequent to sale under simple money decree—Postponement of sale—Transfer to mortgage decree-holder without notice to prior decree-holder—Validity—Proper procedure.*

U. P. REGUL. OF SALES ACT (1934), S. 10.

Where after the postponement of a sale under a simple money decree, a decree on a mortgage is passed against the same Judgment debtor, the property once sold cannot be transferred to the later decree-holder without notice to the prior decree holder. The second decree holder cannot have preference in the order of sale, though there might have been a mortgage of the property in his favour —If the proceedings in the two decrees are to be taken together, then the earlier decree-holder ought to be given notice of the later decree and proceedings thereon —Otherwise the person first in the field is entitled to have his decree dealt with by the ordinary sale procedure. (*Darling, S. M. and Bomford, J. M.*) SAHE

1938 R D

——S 10—*Appli*
sion for discharge b

It would seem tha
Regulation of Sales
which there is an explicit provision for the subsequent mortgagee discharging the first mortgage. (*Darling, S M and Bomford, J.M*) SAHEBZADA MAL *v* KAULBAN MAL. 1938 R D. 433 (2)= 1938 A.W R. (B R) 312

UNITED PROVINCES REVENUE MANUAL. Para. 223—*Plot proprietor—If a co-sharer qualified to be appointed lambardar.*

A plot proprietor is not a co sharer within the meaning of the rule in Para 223 of the Revenue Manual and

holding an interest"—Co sharer—Right of to apply to set aside sale

In order to give a co sharer a right to

contingent inter
M) THAKUR

——Paras

Competency—Execution proceedings governed by O 21, C. P. Code. *See* AGRA TENANCY ACT, S 248 (3) 1938 R D 254.

UNITED PROVINCES STAMP (AMENDMENT) ACT (1936), S 6 A (2)—*Powers of Court to give time.*

Where a document is improperly stamped, under the

Sch IV Group B, Serial No 11—*Applicability—Suit under S 86, 205 of Agra Tenancy Act*

Where a suit for ejectment is brought under S 86 read with S. 205 of the Agra Tenancy Act, action is

U. P TEMP. REGUL. OF EXECUTION ACT (1934), S. 7.

taken under S. 92 and, therefore, it falls under Serial No. 11 of Group B of the IV Sch. of the Stay of Proceedings Act. Hence all execution proceedings in such suit are stayed by the Act. (*Darling, S M and Mehta, J M.*) HOLDSWORTH *v* ZAMINDAR CHAUDHARI. 1938 R D 301 = 1938 A.W R (B R) 391.

U. P SUGAR CANE RULES (1936), Rr. 9 and 13 —*Two persons charged under—Trial and conviction of one—If bars conviction of the other subsequently*

Where though two persons were charged under Rules 9 and 13 of the U. P. Sugar Cane Rules, only one of them was tried and convicted, as the other had dis-

——R 13 (1) (i)—*Interpretation—Registers and records—If should be kept at purchasing centre.*

What Sub R. (1) (i) of R. 13 of the Sugar Cane Rules means is that all the registers and records as required by R 11 (7) shall be kept at the purchasing centre and shall be "made available" which means shall be produced for inspection when asked for by the

S 8—*Procedure—Benefit of Act—If to be given to all*

GAYA BUX SINGH I L.R (1938) All. 226 = 1938 R D 140 = 174 I C 86 = 1938 A L R. 234 = 10 R A 545 – 1937 A L J 1387 = 1938 A.W R 20 (H C) = A I R 1938 All 134

——S 7—*Period for payment—Power of Court to extend*

Under S 148, C P. Code, and also in the exercise of

1938 A W R. (O C.) 5 = 1938 R D 69 = 172 I C. 515 = 1938 O A 23 = 10 R O 177 = 1937 O.W.N 1233 = 1938 O L R. 6 A.I.R. 1938 Oudh

U. P. TEMP. REGUL. OF EXECUTION ACT (1934), S. 7.

——**S. 7**—*Period of thirty days—When commences.*

Under S. 7 of the U. P. Temporary Regulation of Execution Act, the maximum period of thirty days which can be allowed by the Court for payment of the 25 per cent. of the amount due under the decree means thirty days from the date of the order, and not thirty days from the date of the application. (*Srivastava, C. J. and Hamilton, J.*) AMBIKA PRASAD v. AJODHYA PRASAD. **13 Luck 666 = 1938 A W R. (C.C.) 5 = 1938 R D. 69 = 172 I C 515 = 1933 O A 177 = 1937 O W.N. 1233 = 1938 O L R 6 = A I R 1938 Oudh 50.**

UNITED PROVINCES TOWN AREAS ACT (II OF 1914) S. 3 (2)—*Scope and effect of—Declaration by Government—If conclusive for purposes not connected with Act—Finality on question of right of occupier of house to transfer right of occupation.*

Any area included in a town are[a] [illegible] Local Government under S. 3 of the [illegible] be such, must be presumed to be no [illegible] tural village, and the decision of the Local Government may be final and conclusive, but such finality under S. 3 (2) is only for the purposes of the Act. Where [illegible] on the point, the declaration of the Government cannot be taken as conclusive for purposes other than those of the Act. (*Niamatullah J.*) MATHURA PRASAD v. BHOLA NATH. **174 I C 433 = 1938 R D. 233 = 1938 A L R 272 = 10 R A 575 = 1937 A L J 1301 = A I R 1938 All 144**

UPPER BURMA LAND AND REVENUE REGULATION (1889), Ss 25 and 53 (1)—*Ejectment of occupier in possession of state land—Procedure—Lessee from government of state land—Position and powers of —Right to eject person in occupation prior to his lease—Jurisdiction of Civil Court to entertain suit for ejectment of such occupier.*

The Upper Burma Land and Revenue Regulation confers certain [illegible] provides by S. [illegible] state land may [illegible] certain circums[illegible] those circumsta[illegible] not devolve on a lessee of state land Nor can a Civil Court exercise these powers, for S 53 (1) of the Regulation bars the jurisdiction of Civil Courts in such matters. A lessee of state land cannot sue to eject an oc- [illegible]

[illegible] *allowing debris to fall out—Disobedience—If punishable—Penal Code, S.* 188.

Under R. 17 all disputes arising between native miners as to sites or other matters shall be decided by the Inspector of Mines, but there is nothing in the rules,

or in the conditions of the license issued under the rules, which gives the Inspector of Mines authority to prohibit a person from digging his mine and allowing the debris to fall out. The "other matters" referred to in R. 17 do not appear to include matters of this kind, or else surely some provision would have been made for the enforcement of the Inspector's orders According to R. 18 the orders are of the kind that a Revenue Officer can pass under the Upper Burma Land and Revenue Regulation, 1889, and the word "order" as here used does not appear to mean a command but a "decision." S. 188, I P Code, could not possibly apply to orders of the Inspector of Mines passed under R 17 *P* and *G* were each digging for precious stones by working mines of the kind called lu and *G* complained that debris from *P's* lu dropped into his lu. Inspector of Mines and Sub-Divisional Officer inspected the locality and came to the conclusion that *P* should be prohibited from passing [illegible] perennial stream The [illegible] by *P* for which he was [illegible] Code. On revision.

Held, that the Inspector of Mines had no authority to issue such an order. There does not appear to be any provision under the Upper Burma Ruby Regulation or [illegible] ed mis- [illegible] his acts [illegible] PO v. [illegible] 701 = [illegible] 223.

[illegible] **ACT** [illegible] ing Act (XI of 1934) is not retrospective in operation so as to enable the Court to exercise wider powers to re open loan transactions made before the 15th June, 1934, at any rate when the amount due under such a loan has become the subject matter of a litigation instituted before that date. (*Stone, C.J. and Digby, J.*) BHAGWANTRAO v. DAMODAR. **I.L R. (1938) Nag. 91 = 20 N L J. 285 = A I R 1938 Nag. 112.**

USURIOUS LOANS ACT (X OF 1918) S 3—*'Excessive' meaning of—Interest at 12% compound interest in Bihar—If excessive*

'Excessive' is explained to mean, excess of that which the Court deems reasonable having regard to the risk at [illegible] SINGH v. RAMGULAM SAHU. **174 I C 197 = 4 B R 401 = 10 B P. 493 = A.I R. 1938 Pat. 324.**

——**S 3 (as amended by S 5 of Punjab Act VII of 1934)** *Prior and subsequent mortgage—Considera-* [illegible] ent. The mortgagee brought a suit on the second mortgage.

Held, that in these circumstances the two transactions were independent of each other and the mere fact that the consideration for the second transaction was the

USURIOUS LOANS ACT (1918), S. 3.

amount due on the first, would not make them one transaction. Hence it was permissible to the Court to re open account of mortgage transaction of 1930 under S. 3 of the Act as that mortgage and the mortgage in dispute were two independent transactions.

Held, further, that the suit was not brought on a

——S. 3--(as amended by U. P Amendment Act of 1934), —*Scope and effect—Relief to debtor—Limits.*

As the local legislature has by the U. P. Usurious Loans (Amendment) Act of 1934 laid down the specific principles on
interest is to
after the pass
necessity be d
Act. The
original Act is that the Court can now relieve the debtor of liability in respect of excessive interest not only when the interest is excessive and the transaction was substantially unfair but also where either the interest is excessive or the transaction was substantially unfair. (*Thomas C.J and Zia-ul Hasan, J.*) RAM NARAIN v. CHANDRIKA PRASAD. 175 I C 50= 10 R O 307=1938 A W R (C C) 64= 1938 R.D. 567 - 1938 O L R 259=1938 O A 434= 1938 O.W N. 535=A I R. 1938 Oudh 156

——S 3 (1) (ii) -*Operation of*

The words "Notwithstanding any agreement, purporting to close previous dealings and to create a new obligation" in S 3 (1) (ii) of the Usurious Loans Act

VENDOR AND PURCHASER—Contract of sale—Payment of deposit—Effect—Breach—Right to return of deposit—Principles *See* CONTRACT ACT S 73 1937 M W N 1288

WAJIB UL ARZ—*Construction—Exclusion of daugh*

wedded wife his relations and other persons having a right will get property."

Held that no mention having been made of daughters, daughters were meant to be altogether excluded from inheritance and that they were not included in "relations and other persons having a right." (*Thomas C J and Zia ul Hasan, J*) JODHWATI v RAM SINGH. 173 I C 972=1938 O W N 338= 1938 O L R 162=1938 R D 410= 10 R O 242=(1938) A W R (C C) 37= 1938 O A 251

——Construction—Inferential construction—It permissible *See* LANDLORD AND TENANT—ABADI 1938 O W N 500

——*Construction—'Lawalad'—Meaning*

On a construction of the 2nd para of the Wajib ul arz concerned, it was held that there was no reason to give the word the meaning of 'sonless'. (*Thomas, C. J, Zia*

WATER RIGHTS.

ul-Hasan and Hamilton, JJ.) RAGHURAI v. BINDRA PRASAD. 175 I C 32=1938 O L R. 252= 10 R D. 294=1938 R.O. 575=1938 O A 447= 1938 O.W.N 547=A.I R. 1938 Oudh 140 (F B.).

——*Construction—Rules of—Construction consistent with personal law*

It is a well established rule of law that custom in derogation of the personal law of the parties must be strictly proved, and so far as posible Wajibularzes must be construed in such a manner as to make them consistent with the provisions of the Hindu Law (*Thomas, C.J. and Zia-ul-Hasan, J*) JODHWATI v RAM SINGH. 173 I C 972=1938 O W.N 338= 1938 O L R. 162=1938 R D. 410= 10 R.O 242=1938 A.W R (C C) 37= 1938 O A 251.

consulting the zamindar. (*Darling, S M and Bomford, J.M*) NANHI DULLAIYA v RAM PRASAD. 1937 R D. 598.

——*Construction -Widow's right—Custom giving her power to transfer in favour of nearest reversioners—Alienation in favour of person other than reversioner for legal necessity—Validity.*

Where the custom recorded in the Village Wajibularz states that the widow has power to transfer her husband's share to her nearest reversioners and has no power to transfer it to anybody else it does not prohibit alienation for legal necessity Though a widow can make an alienation in case of legal necessity she can do so only to one of the nearest reversioners of her hus
else Consequently an aliena-
one who is not such a rever-
ner or not it is made for legal
J) AYUB KHAN v IMDAD
D. 393=1938 O W N. 296=
R. (C C) 33=1938 O A 470.

——*ntries in—value of—Entry not corroborated by instances.*

An entry as to the existance of a custom in a wajib-ul-arz even when it is not corroborated by instances is a strong piece of evidence in support of that custom. (*Bhide, J*) RATI RAM v. SHERA RAM

less, but no attempt was made to correct nazul record, it is open to government under Ss 21 and 23 of the Waste Lands (Claims) Act to relinquish possession, if it had been taken. (*Roughton, F. C*) R S. B V BUTI, *In re* 1938 N L J 268.

WATER RIGHTS—*Inam village—Irrigation tank—Duty of inamdar—Right of ryots to water—Nature of—Assignment by inamdar of part of tank bed—Suit by ryots—Competency—Special damage—Proof of*

It is no doubt the duty of an inamdar to preserve and maintain the tank in the inam village as a tank for the purpose for which it is intended So long as the tank subserves the purposes of an irrigation tank, he ought not to do anything which might in any way interfere with the right of irrigation which the ryots owning land the tank ayacut have The right of the Kudi tenants in an inam village is more in the n proprietary right annexed to the ownership

perties in case the son predeceased wife. It was contended that these that the testator did not intend would vest in the son immediately or on the happening of an uncertain being alive after the death of the that contention.

Held, that under the terms of th vested interest in the properties on the death of the testator. (*S. K. Ghose and Nasim Ali, JJ.*) SISIR CHANDRA MAITRA *v.* AJIT KISHORE MAITRA.
177 I C 764 = 11 R C. 273 - 68 C L J 82 = 42 C.W N. 605 = A I R. 1938 Cal. 466.

——*Construction—Will in favour of wife and daughter—Nature of interest conferred.*

A will provided that after the death of the testator and even in his lifetime in case he ceased to be in possession of his senses, the wife should have proprietary possession over all the property and enter into proprietary possession and she should be entitled to and be owner of all the property. If a son should be born to the testator from his wife he should be entitled to the estate on attaining majority an should supervise and possession "bataur e ma ... Should no son be born, the daughter was to be owner of and entitled to the whole estate generation after generation after her mother.

Held, that the wife was given only a life-interest and absolute interest was given to the daughter. (*Zia ul-Hasan, and Hamilton, JJ.*) SRI RAM *v.* MAHOMED ABDUL RAHIM KHAN. **172 I C 882 = 1938 O L R 44 = 1938 O.A. 96 = 1938 O W N 67 = 10 R O 200 = A I R 1938 Oudh 69**

——Execution— Validity—Testator affixing mark—His hand guided by another. *See* SUCCESSION ACT,

... to him to ... Succession ... The District ... counts of the executor and to direct him to deposit any amount in Court (*M.C. Ghose, J.*) PROMOTHANATH DUTTA *v.* GOURDAS MAHATO **174 I C 951 = 10 R C 739 (2) = 66 C L J 386 = A I R 1938 Cal 294**

——*Executor — Refusal to accept office—Effect—Vesting of estate—Heir at law—Right of suit of—Limitation Act, S. 17—"Legal representative"—If includes heir.*

There is nothing to preclude an heir-at law from maintaining an action in ejectment or otherwise recovering possession of the estate left by a testator where the executors appointed under the will of the testator decline to accept office. The entire estate, both movable and immovable property left by the deceased must be deemed to vest in the heir at law until an administrator is duly constituted. The heir at-law, if he likes, can get himself appointed administrator, but he is not bound to do so It is open to legatees to have an administrator duly constituted; and as soon as an administrator is constituted, the estate would be divested from the heir at law, and the person competent to maintain a suit on behalf of the estate would then be such administrator According to the plain language of S. 17, Limitation Act, "legal representative" would also

cutor assenting to it—If becomes trustee.

If there is a specific bequest to the executor himself on trust and he assents to it, the executor becomes a trustee for those who are beneficially interested. He is thereupon precluded from dealing with the thing bequeathed or making title as executor. (*Ameer Ali, J.*) CHARU CHANDRA GHOSE *v* BANKIM CHANDRA SETT. **42 C.W.N. 1115.**

——*Executor—Status of—When trustee.*

The persons named executors in a will were not merely executors but were charged with the duty of managing the property and paying the income to charity. Only the income was disposed of under the will. ... sposed of, and some corpus, and taking ... upon the executors and also the possibility of having successive legal estates, the executors were in all but name trustees. (*Ramesam and Stone, JJ.*) VENKATASUBRAMANIA AYYAR *v.* SIVAGURUNATHA CHETTIAR.
A I R. 1938 Mad 60.

——*Grant of probate—Onus of proof.*

The onus *probandi* lies in every case upon the party propounding a will, and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator. If a party writes or prepares a will under which he takes a benefit,

... SOOF AHMED *v.* ISMAIL AHMED. **178 I C 165 = A I R 1938 Rang 322.**

——*Probate Court—Duty of*—Locus standi *of objector—Determination—Procedure—Preliminary proceedings—Framing of issue after taking of evidence—Propriety.*

An issue on the question of the *locus standi* of an objector to contest the proceedings for the grant of a probate, is an issue which ought to be tried and determined as a preliminary proceeding It is quite wrong to frame such an issue after the examination of all the relevant witnesses. (*Mukerji and S. K Ghose, JJ.*) GARIB SHAW *v* PATIA DASSI. **175 I C 920 = 11 R C. 14 = 66 C L J. 337 = A.I.R. 1938 Cal 290.**

——*Probate Court—Enquiry by—Scope of.*

A Court of probate is not a Court of probity, and the Court has not to ask whether the testatrix bequeathed her property as they think she ought to have done If the propounders prove the *bona fides* of the transaction and there are no circumstances suggesting suspicion, probate can be granted. (*Baguley and Mosely, JJ.*) SAW YAW BA *v* SAW BA MAUNG **177 I C. 382 = 11 R R 118 = A I R 1938 Rang 251.**

——*Probate—Granting of—Considerations.*

In connection with the question as to whether probate should or should not be granted, probability is not the main thing to be considered by a Court. It has to be satisfied as to whether the will was, as a matter of fact,

WILL.

executed and if so executed whether it was by a free, capable and willing testator. (*Mukerji and S. K. Ghose, JJ.*) GARIB SHAW v. PATIA DASSI.
175 I.C 920=11 R.C 14=66 C L J. 337=
A.I.R. 1938 Cal 290

——*Probate Court—Province of—Question whether a provision in a will takes effect immediately—Validity or otherwise of other provisions.*

A Court of probate cannot entertain questions as to whether some of the provisions of a will would take effect immediately, or whether other provisions contained in it are valid or otherwise. These will have to be determined if proper proceedings are started for the construction of the will. (*Mukerji and S. K. Ghose, JJ*) GARIB SHAW v. PATIA DASSI. 175 I.C 920=11 R C 14=66 C L.J. 337=A I.R. 1938 Cal 290.

of will or of existence of will ...
—Proof of valid execution—...

Petitioner applied for revoca... ministration granted to the respondent as in an intestacy and for a grant of probate to herself of a will alleged to have been made by her deceased ... dered in evidence a copy of the ... copy was in the handwriting of t... purported to contain a copy of th... testator, with the words "signed ... names of attesting witnesses were fo... was no indication at all as to whether the attesting witnesses ever did attest ... as to their identity ... due execution of the ... evidence as to whethe... the date of the testator's death.

Held, that the valid execution of ... been proved and that the Court could not on the materials presume a valid execution of the will in the absence of proof that the contemplated formalities were completed. (*Wadsworth, J.*) ALAMELU AMMAL v PARTHASARATHI NAIDU. 47 L W. 31=
1938 M W N 149=A.I.R. 1938 Mad 326=
(1938) 2 M L J. 95

——*Proof of—Omission to call wi*...
Effect.

The omission to call the writer of ... and to examine him is not anything ... the other witnesses have been examin... given convincing evidence. (*Mukerji* ... *JJ.*) GARIB SHAW v PATIA DASSI. 175 I C 920=11 R C. 14=66 C L J. 337=A I R. 1938 Cal. 290.

——*Proof of—Onus—Suspicious circumstances—Duty of applicant for probate.*

The burden to show that the will, the probate of which is sought, is the last will of a free and capable testator lies on the person applying for the probate, and if there are any suspicious circumstances attending the execution of the will, the burden is on the petitioner to explain those circumstances. Where the testator is a man advanced in years and in extremely feeble state of health and where the disposition evidenced by the will runs counter to those admitt... him by previous wills executi... the heavier on the appli... *Ahmad and Ismail, JJ.*) ... v. MRS MAUD MARTIN. 17...
1938 A L R. 342=...
1938 A L J. 97=A I R. 1938 All. 201.

WILL.

——*Proof of—Reasonable natural and probable terms—Suspicious circumstances—Effect on probabilities.*

Mere suspicion, cannot render a will improbable, which is otherwise reasonable, natural and proper in its terms. It is not in accordance with sound rules of construction to apply to such a will, those canons of construction which demand a rigorous scrutiny of documents of which the opposite can be said, namely that they are unnatural, unreasonable or tinged with impropriety. (*Addison and Din Mahomed, JJ.*) KESHO RAM v. PANNI LAL. 40 P L.R. 4.

——*Revocation — Mahomedan testator— Registration of original will—Communications to solicitors to draft a codicil as per his instructions—Codicil not completed—Whether communications operate as codicil and revoke part of his will.*

... upon the draft.

Held, that it is quite possible that a letter by a ... draft, that the solicitors should draw a proper draft ... ifications communicated and ... codicil formally. (*Wads-* ...

A mere expression of an intention to revoke a will at some future date cannot amount to a revocation of the will under any system of law. (*Wadsworth, J.*) MAHOMED YOONUS v. ABDUR SATTAR ISMAIL.
47 L W 719=1938 M W N. 699=
A I R. 1938 Mad 616=(1938) 1 M L J. 444

——*Testamentary capacity — Proof required—* ...

... testator when he is midway between consciousness and unconsciousness, is that he should be capable of understanding that he is engaged in executing the will for which he had given instructions to the lawyer. It is unnecessary to place before the testator all the various alternatives or the details of the will that he desired to make. It is sufficient if the general tenor of his dispositions is placed before him. (*McNair, J*) AMULYA KUMAR BOSE, *In the goods of.* 42 C W.N. 649.

——*Will made by sick and dying person—Degree of understanding required.*

Wills are too frequently made by the sick and dying, ... ich the law ... ay ... ly be expected from ... enough that a testa... usual ques... as ... condition

the objects of his bounty, as to the nature of the instrument which he executes and as to the general nature and general objects and the provisions which it contains; if he can do that, though he may be very feeble and debilitated in understanding, and be at the point of death, it is enough. (*Roberts, C. J. and Dunkley, J.*) EUSOOF AHMED v. ISMAIL AHMED. 178 I.C. 165 = A.I.R. 1938 Rang. 322.

WIRELESS TELEGRAPHY ACT (XVII OF 1933), Ss. 3 and 6—*Wireless set without licence—Offence—Subsequent issue of licence to take effect from date earlier than date of offence—Effect—Conviction—If justified—Separate conviction and sentence under Telegraph Act—Sustainability.*

The accused was convicted under Ss. 3 and 6 of the [illegible] the offences. It appeared that the accused had been taking out licences for some years before the offence and that actually a licence had been issued by the post-master to take effect from a date earlier than the date on which the accused was said to have been in possession without a licence.

Held, (1) that the accused was guilty of an offence under Ss. 3 and 6 of the Wireless Telegraphy Act and that the issue of a licence subsequently would not give a sort of pardon in respect of an offence already committed; (2) that there was no justification for a separate conviction under S. 20 of the Telegraph Act or for a separate sentence under that section.

Quaere: Whether the use of a wireless set without a licence would amount to an offence under S. 20 of the Telegraph Act. (*Panarang Rao, J.*) A. S. PANDIAN v. EMPEROR. 48 L.W 330 = 178 I C. 59 = 39 Cr L J. 991 = 1938 M.W.N 823 = A.I.R 1938 Mad 821 = (1938) 2 M.L.J 281.

[illegible]

——— Duty [illegible] Government of India Act S. 270—Not necessarily confined to legal duty—Medical officers bound to obey the rule in the medical code made for their guidance. *See* GOVERNMENT OF INDIA ACT (1919), S. 270. 40 Bom L.R. 825.

———"*Hasab rasad khewat*"—*Meaning of.* [illegible]

——— "In his own right"—Meaning of. *See* BOMBAY LOCAL BOARDS ACT, S. 15 (2). 40 Bom.L.R. 525.

———Mookassa and Vrittee—Meaning of. *See* LAND TENURES—MOOKASSA AND VRITTEE TENURES 1938 N.L.J. 112.

———"Misappreciation" and "misapprehension." *See* EVIDENCE. A I R. 1938 Nag 394

———"Police Officer." *See* EVIDENCE ACT, S. 25. A I R. 1938 Sind 1

———"Privilege" and "Right." *See* INTERPRETATION OF STATUTES. [A.I.R. 1938 Rang 130 (F.B.).

———'*Pukhtadar*'—*Meaning of.*

Pukhtadar is generally taken to be a translation or the equivalent of sub-settlement holder, but the word is vaguely used by people who have all sorts of fancy rights and comes to mean little more than heritable and transferable rights. (*Drake brockman, S. M. and Knox, J. M.*) JADUNATH SINGH v. MUHAMMAD AHMAD ALI KHAN, 1938 R D 591(2) = 1938 A W.R (B R.) 329 (2).

———"Purchase"—If includes compulsory acquisition. *See* BOMBAY MUNICIPAL BOROUGHS ACT, S 114. 39 Bom.L R. 1257.

———Saraogis—*Meaning of.*

The word *Saraogis* is only another general word for Jains. (*Weston, I.C.S.*) CHAND KOER v. PEM RAJ. 1938 A M.L J. 79.

——— [illegible] "—Member of Bombay [illegible] a servant of the Crown. [illegible] ACT (1919) S. 270. 40 Bom L.R. 825.

———"Takia" *See* MAHOMEDAN LAW—"TAKIA." A.I.R. 1938 P C. 202 = (1938) 2 M.L J. 239 (P C.).

———"Talukdar and heir to Taluk" in Sannads *See* 1938 O A. 353.

———Timber"—If includes "Plywood". *See* BOMBAY CITY MUNICIPAL ACT, S. 394. 40 Bom L R. 322.

———"Unto and to the use of" in conveyance—meaning. *See* DEED. 42 C W.N. 937.

WORKMEN'S COMPENSATION ACT (VIII OF 1923)—*Commissioner appointed under—Power to award arrears of pay as compensation.*

The Workmen's Compensation Act prescribes compensation to be paid in certain circumstances. It is not open to the Commissioner to award any damages or any other compensation except that provided by the Act Hence arrears of pay cannot be granted by him as compensation. (*Ismail, J.*) JAGANNATH BRIJ RAJ v SOEMBAR. 1938 A W.R. (H C) 681 = 1938 A L J. 1007.

———S. 2 (1) (d)—*Widow remarrying after husband's* [illegible] THE KHULNA ELECTRIC SUPPLY CORPORATION, LTD. v. BAHADUR SARDAR. 42 C W N. 516 = 68 C L J. 467.

———S. 2 (1) (d) (ii)—*Partial dependency of father and mother—Question of fact.*

The question whether the father and the mother were [illegible] workman's death in part [illegible] is a question of fact in [illegible] ed and his father paid [illegible] to maintain themselves [illegible] one common establish[illegible] dependent on the earnings of the father. Consequently the father and the mother are dependants and entitled to some portion of the compensation money payable under the Act. (*Derbyshire, C.J. and Mukherjea, J.*) THE KHULNA ELECTRIC SUPPLY CORPORATION, LTD. v. BAHADUR SARDAR. 42 C.W N. 516 = 68 C L J 467.

———S 2(1) (e)—'*Employer*'—*Person getting labour supplied by another.*

If a person who is responsible for the putting up of a building gets workmen supplied by a Sirdar and pays them through the Sirdar, he and not the Sirdar is the employer of the workmen for the purposes of the Workmen's Compensation Act. (*Derbyshire, C.J. and*

WORKMEN'S COMP. ACT (1923) S. 2.

Mukherjea, J.) KALOO & SONS *v.* OFATANNESSA BIBI. 4

——**S. 2 (1) (n)**—*Construction—Wo*
on wages per day—If "workman" unde

The expression monthly wages not
hundred rupees" in S. 2 (1) (*n*) of
Compensation Act means wages which do not exceed on

only so as to exclude workman employed by the day or by the week or by the year. A workman employed on certain wages per day is
(*Beaumont, C J. and Sen,*
HALL LINES *v.* ASIS THO
I.L.R. 193
10 R B
A I R. 1938 Bom 110

——**S 2 (1) (n)**—*'Not permanently employed'—Meaning of*

The expression "not permanently employed . . . in any office of a railway" in S. 2 (1) (*n*) of the Act contemplates such servants as are not required to perform their duties continuously or habitually in the office, that is to say, in
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the course of his employment, to d
going round on his bicycle to deli
a servant who is not continuously or
in the office, and therefore he falls
of the definition of workman in S 2 (1) (*n*) of the Act, although he is permanently employed in the office (*Niyogi, J.*) SECRETARY OF STATE *v.* GEETA.
172 I.C 705=10 R N. 244=A I R 1938 Nag. 91

——**S. 2 (1) (n)**—*Person employed casually—If a workman*

A person who was employed in the trade or business of the employer does not cease to be a workman within the meaning of the definition, even though the
ment was of a casual nature. In order to be
from that definition, the workman must both
ployment of a casual nature and be employed o
than for the purposes of the employer's t
business. (*Derbyshire, C.J and Mukherjea, J.*) THE KHULNA ELECTRIC SUPPLY CORPORATION, LTD *v.* BAHADUR SARDAR. 42 C.W.N. 516=68 C L J 467.

——**S 2 (1) (n)**—*Word 'administr*
fies 'District or Sub-Divisional office'.

The word 'administrative' in S. 2
is not an adjective qualifying 'district and Sub-Divisional office". (*Niyogi, J.*) SECRETARY OF STATE *v* GEETA. 172 I C 705=10 R N. 244=A.I R. 1938 Nag. 91.

——**S. 2 (1) (n) and Sch. II (i)**—*Workman—Con-*

WORKMEN'S COMP. ACT (1923), S. 3.

PORT, LTD. *v.* ARUMUGA KOUNDER.

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Dunkley, J.) K. C. NATH *v.* SALIMA KHATOON.
A.I R. 1938 Rang. 439.

——**S 3**—*Accident arising out of and in course of employment—Facts that go to show.*

The deceased was employed in an Electric Supply Company to put up and change the posts and to connect and disconnect wires On the day of accident he was sent out to disconnect wires from a certain house. While
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178 I C. 549=A.I R. 1938 Rang. 414.

——**S 3 (1)**—*Accident "arising out of employment"—Foundry mastry killed by lightning while running metal from furnace to chimney.*

Where the deceased who was employed as a foundry mastry was killed by lightning while he was at his work running metal from a furnace to the bottom of a metal chimney.

MILLS *v.* KHANTAMONI DASI. 42 C.W.N. 1093.

——**S. 3 (1)**—*Accident arising out of employment—Onus.*

conjecture, then of course the applicant fails to prove his case because it is plain that the onus in these matters is upon him. In a case where compensation was claimed on the ground that the deceased met with his death at the hands of an elephant in the course of employment

Sharpe, J.) BOMBAY BURMA TRADING CORPORATION, LTD. *v.* DAW CHI.

178 I.C. 249 = A.I.R. 1938 Rang. 349.

——S. 3 (1)—*Liability of employer—Limits—Disobedience of rules—Effect—Difference between English and Indian Law*

Where a workman meddles with machinery, which he is forbidden by specific rules to touch, and attempts to effect repairs which are not part of his work, and sustains injuries during the process, he is not entitled to compensation. The English Law is radically different from the Indian Law in this respect Under the English Law compensation is disallowed, if it is proved that the injury sustained is attributable to serious and wilful misconduct of that workman. But under the Act in force in Burma, the sole question is whether the workman wilfully disobeyed a rule devised for the purpose of securing the safety of workman, and not whether that disobedience amounted to misconduct, serious or otherwise. (*Baguley and Mosely, JJ.*) MAUNG BA TUN *v.* U OHN KHIN. 177 I.C. 626 = 11 R.R. 151 = 1938 Rang L.R. 293 = A.I.R. 1938 Rang. 289.

——Ss. 4 and 30—*Principle governing award of compensation—Question of law—When arises.*

The principle on which compensation under the Workmen's Compensation Act is to be awarded has to be determined in accordance with the provisions of the Act and cannot be departed from on grounds of sentiment. Where in the case of a loss of the index and middle fingers of a labourer, compensation is awarded as for loss of the arm below the elbow an appeal against such a decision involves a substantial question of law. (*Ismail, J.*) JAGANNATH BRIJ RAJ *v.* SULMBAR.

1938 A.W.R. (H C) 681 = 1938 A L J. 1007.

——Ss. 8 (4) and 9—*Death of an employee—Allotment of compensation to dependant—Subsequent death of dependant—Employer, if entitled to refund of amount paid.*

It is clear that once an allotment of compensation to a dependant or a distribution of compensation money among several dependants is made, the compensation, so allotted or distributed becomes the property of the defendant and if the dependant dies, the said sum being his property will devolve on his or her h[illegible] right of an employer to get a refund under S. 8 can only arise when a workman dies w[illegible] dependant. S. 9 has no application to a [illegible] money has been allotted to dependant on the death of an employee. (*Venkataramana Rao and Abdur Rahman, JJ*) [illegible]

I.[illegible]

10 R M 682 = [illegible]

A.I.R. [illegible]

——S. 9—Applicability—Allotment made to dependant on death of employee. *See* WORKMEN'S COMPENSATION ACT, SS 8 (4) AND 9.

I L R. 1938 Mad. 716 = 1938 M.W N 124 = 47 L W. 159 = (1938) 1 M L.J. 571.

——S. 10—*'Claim'—Meaning of—Demand by workman to foreman of railway for compensation—Sufficiency.*

A claim within the meaning of S. 10 of the Workmen's Compensation Act is a communication by or on behalf of the workmen from which the employer can see that a demand is being made upon him to pay compensation in respect of an accident. *In the case of a very large concern like a railway company, a demand by a workman to a foreman for compensation is not a claim within the meaning of the section.* (*Derbyshire, C J. and Mukherjea, J.*) SALAMAT *v.* THE AGENT, EAST

INDIA RAILWAY CO. I L R. (1938) 2 Cal. 52 = 42 C.W.N. 341 = A.I.R. 1938 Cal. 348.

——S. 10—*Sufficient cause for not instituting claim within six months—What amounts to.*

What amounts to sufficient cause for a workman not instituting a claim within six months of the accident can only be decided in each particular case with reference to the facts and circumstances of that case. Where the workman on returning to work three months after the accident was re employed by the same employer in the same workshop at the same rate of wages and he continued in that employment at those wages until long *after the period of six months from the happening of the accident* had gone by, there was sufficient cause for his not bringing proceedings under the Workmen's Compensation Act within six months of the accident. (*Derbyshire, C. J. and Mukherjea, J*) SALAMAT *v.* THE AGENT, EAST INDIA RAILWAY CO.

I.L.R. (1938) 2 Cal. 52 = 42 C.W N. 341 = A.I.R. 1938 Cal. 348.

——S 10—*Workman having sufficient cause for not instituting claim within six months—Act, if impose further time limit.*

When once the workman had, for sufficient cause, not brought his proceedings for compensation within six months of the accident, there is nothing in the Workmen's Compensation Act, the Limitation Act or in any other statute imposing a further time limit for bringing his proceedings. (*Derbyshire, C. J. and Mukherjea, J.*) SALAMAT *v* THE AGENT, EAST INDIA RAILWAY CO.

I L R. (1938) 2 Cal. 52 = 42 C W.N. 341 = A.I.R. 1938 Cal. 348.

——S. 12 (1)—*'Contractor'—Person supplying labour.*

A person who does not contract to do the whole or any part of the work but merely supplies labour at so much per head, is not a contractor within the meaning of S. 12 (1) of the Workmen's Compensation Act, and the employer has, therefore, no right to indemnity against him. (*Derbyshire, C.J. and Mukherjea, J.*) KALOO & SONS *v.* OFATANNESSA BIBI.

42 C.W.N. 803.

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sioner to have evidence taken on commission. S. 23 invests the Commissioner with powers of the Civil Court [illegible] Code only for the purpose of taking [illegible]th and of enforcing the attendance of [illegible] compelling production of documents and [illegible] O. 26, C. P. Code, which contains rules [illegible] to commissions to examine witnesses is not mentioned in R. 38 of the rules made under S. 32 of the Act. This omission indicates the want of power or jurisdiction in the Commissioner to issue commissions to examine witnesses. Proviso (*b*) to R. 38 cannot be read as authorising the Commissioner to adopt a rule of procedure entirely outside and unconnected with the scope of the rules of procedure laid down by the rules. (*Mya Bu and Sharpe, JJ.*) SINGH *v.* BURMA RAILWAYS. 1938 Rang.L.R. 641.

——S. 23—*Order of Commissioner—Revision.*

A Commissioner appointed under the Workmen's Compensation Act and adjudicating a claim made under the *Act is a "Court subordinate to the High Court"* within the meaning of S. 115, C. P. Code or S. 44, Punjab Courts Act, and a petition for revision lies against an order passed by him provided all the other necessary conditions are present. (*Tek Chand, J.*)

G. D GIANCHAND *v.* ABDUL HAMID.
A.I.R. 1938 Lah. 855

——S 30—*Appeal—Question of law—When arises* *See* WORKMEN'S OMPENSATION ACT, Ss. 4 AND 30.
1938 A W R. (H C) 684=1938 A.L J. 1007.

——S. 30—*Finding by Commissioner that deceased was workman—Interference in appeal*

Where there is evidence upon which the Commissioner could come to the conclusion that the deceased was a servant and a workman within the meaning of the Act, it would be wrong for the High Court in appeal to disturb his finding although there is some evidence suggesting that the deceased was an independent contr.

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workman within the meaning of the Act (*Costello, A C. J and Lethbridge, J.*) NANDA KUMAR SINGH *v.* PRAMATHA NATH 42 C.W N 123

——Sch II (iii)—*Construction—"Otherwise adapting for use, transport, or sale, etc."—Meaning of.*

and its closing up and removal constitutes a process which may be adapting it for transport or adapting it for sale. (*Beaumont, C. J. and Sen, J.*) SAVLARAM *v* SALUBAI. I L R 1938 Bom 145=174 I C 427=10 R B 450=40 Bom L R. 106=A I R. 1938 Bom. 171

of one and the same business.

to repair boxes containing goods unloaded from ship in port—If workman.

A man employed as a carpenter to mend or repair boxes containing goods which have been unloaded from a ship within the limits of a port is a person employed in the handling of goods within the limits of the port within the meaning of Sch. II (vii) of the Workmen's Compensation Act, and is therefore a workman. (*Beaumont, C.J. and Sen, J.*) ELLERMAN'S CITY AND H-

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some sort of a flimsy pavilion. (*Derbyshire, C J. and Mukherjea, J.*) KALOO & SONS *v.* OFATANNESSV BIBI.
42 C W.N. 803.

the pipe line The Court ought rather to give a wider than a narrower interpretation to the expression. The test is really whether when a man meets with an accident arising out of and in the course of his employment, he was in the position in which he was when the accident

water mains fixed to the stand pipe a recording instrument which had to be kept working for 24 consecutive hours Two coolies who were employed in the Water Department of the Municipality were placed on guard to watch the instrument during the night. The instrument was in the road and raised above the level of the road.

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WRIT OF PROHIBITION. *See* PROHIBITION—WRIT OF.

WRONGFUL ATTACHMENT. *See* TORT.

ZAILDAR—*Appointment of—Non lambardar appointed by Commissioner after sanctioning candidature—*

WORKMEN'S COMP. ACT (1923), S. 3.

Spargo, J.) BOMBAY BURMA TRADING CORPORATION, LTD. *v.* DAW CHI.
178 I C. 249 = A.I.R. 1938 Rang. 349.

——S. 3 (1)—*Liability of employer—Limits—Disobedience of rules—Effect—Difference between English and Indian Law.*

Where a workman meddles with machinery, which he is forbidden by specific rules to touch, and attempts to effect repairs which are not part of his work, and sustains injuries during the process, he is not entitled to compensation. The English Law is radically different from the Indian Law in this respect Under the English Law compensation is disallowed, if it [illegible] injury sustained is attributable to [illegible] misconduct of that workman. But [illegible] force in Burma, the sole question is w[illegible] man wilfully disobeyed a rule devised [illegible] securing the safety of workman, and [illegible]

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such a decision involves a substantial question of law. (*Ismail, J*) JAGANNATH BRIJ RAJ *v.* SOEMBAR.
1938 A.W.R. (H C) 684 = 1938 A L J. 1007.

——Ss. 8 (4) and 9—*Death of an employee—Allotment of compensation to dependant—Subsequent death of dependant—Employer, if entitled to refund of amount paid.*

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allotted or distributed becomes the property of the defendant and if the dependant dies, the said sum being his property will devolve on his or her heirs. The right of an employer to get a ref[illegible] S. 8 can only arise when a workmar[illegible] dependant. S. 9 has no applicatio[illegible] money has been allotted to depend[illegible] an employee. (*Venkataramana* [illegible] *Rahman, JJ*) ABDURAHIMAN *v.* [illegible]
I L R 1938 Mad 716 = 173 I.C 424 = 10 R M 582 = 1938 M.W N. 124 = 47 L W 159 = A.I R 1938 Mad 402 = (1938) 1 M L J. 571.

——S. 9—Applicability—Allotment made to dependant on death of employee. *See* WORKMEN'S COMPENSATION ACT, SS 8 (4) AND 9.
I L R 1938 Mad. 716 = 1938 M.W N. 124 = 47 L W. 159 = (1938) 1 M L J. 571.

——S. 10—*'Claim'—Meaning of—Demand by workman to foreman of railway for compensation—Sufficiency.*

A claim within the meaning of S. 10 of the Workmen's Compensation Act is a communication by or on behalf of the workmen from which the employer can see that a demand is being made upon him to pay compensation in respect of an accident. In the case of a very large concern like a railway company, a demand by a workman to a foreman for compensation is not a claim within the meaning of the section. (*Derbyshire, C.J. and Mukherjea, J.*) SALAMAT *v.* THE AGENT, EAST INDIA RAILWAY CO. I L.R. (1938) 2 Cal. 52 = 42 C.W.N. 341 = A I.R. 1938 Cal. 348.

WORKMEN'S COMP. ACT (1923), S. 23.

——S. 10—*Sufficient cause for not instituting claim within six months—What amounts to.*

What amounts to sufficient cause for a workman not instituting a claim within six months of the accident can only be decided in each particular case with reference to the facts and circumstances of that case. Where the workman on returning to work three months after the accident was re employed by the same employer in the same workshop at the same rate of wages and he continued in that employment at those wages until long

[illegible]

[illegible] (1938) 2 Cal. 52 = 42 C.W.N. 341 = A.I.R. 1938 Cal. 348.

——S. 12 (1)—*'Contractor'—Person supplying labour.*

A person who does not contract to do the whole or any part of the work but merely supplies labour at so much per head, is not a contractor within the meaning [illegible] Workmen's Compensation Act, and therefore, no right to indemnity [illegible] (*[D]erbyshire, C.J. and Mukherjea, J.*) [illegible] *v.* OFATANNESSA BIBI.
42 C.W.N. 803.

——Ss 23 and 32—*Examination of witnesses—*

[illegible]

evidence on oath and of enforcing the attendance of witnesses and compelling production of documents and material objects O. 26, C. P. Code, which contains rules with reference to commissions to examine witnesses is not mentioned in R. 38 of the rules made under S. 32 of the Act. This omission indicates the want of power or jurisdiction in the Commissioner to issue commissions to examine witnesses. Proviso (*b*) to R. 38 cannot be read as authorising the Commissioner to adopt a rule of procedure entirely outside and unconnected with the scope of the rules of procedure laid down by the rules. (*Mya Bu and Sharpe, JJ.*) SINGH *v.* BURMA RAILWAYS. 1938 Rang L R 641.

——S. 23—*Order of Commissioner—Revision.*

A Commissioner appointed under the Workmen's Compensation Act and adjudicating a claim made under the Act is a "Court subordinate to the High Court" within the meaning of S 115, C. P. Code or S. 44, Punjab Courts Act, and a petition for revision lies against an order passed by him provided all the other necessary conditions are present. (*Tek Chand, J.*)

WORKMEN'S COMP. ACT (1923), S. 31.

G. D. GIANCHAND *v.* ABDUL HAMID.
A.I.R. 1938 Lah. 855

——S. 30—Appeal—Question of law—When arises *See* WORKMEN'S COMPENSATION ACT, SS. 4 AND 30.
1938 A W R. (H C) 681=1938 A L J. 1007

——S. 30—*Finding by Commissioner that deceased was workman—Interference in appeal.*

Where there is evidence upon which the Commissioner could come to the conclusion that the deceased was a servant and a workman within the meaning of the Act, it would be wrong for the High Court in appeal to disturb his finding although there is some evidence suggesting that the deceased was an independent contractor (*Derbyshire, C J. and Costello, J.*) MANAGER, GOURI SANKAR JUTE MILLS *v.* KHANTAMONI DASI. 42 C W N. 1093

——Sch. II (1) and S. 2 (1)—*'Workman'—Conductor of motor omnibus*

A conductor of a motor omnibus, though no ed in operating is employed "in connection operating of the motor omnibus, and is, th workman within the meaning of the Act (*Costello, A C J and Lethbridge, J.*) NANDA KUMAR SINGH *v* PRAMATHA NATH 42 C.W N 123

——Sch II (iii)—*Construction—"Otherwise adapting for use, transport, or sale, etc."—Meaning of.*

The purpose of making, altering, repairing, ornament-

whole clause denotes work done physically upon the article A person employed as a labourer in a cotton godown and who helps to unstack cotton bales or remove them from the godown is a workman falling within Cl. (*iii*) of Sch. II of the Workmen's Compensation Act, the whole process of taking down the bales from the stack in the godown, its opening and examination in order to enable a purchaser to take a sample, and its closing up and removal con which may be adapting it for transp for sale. (*Beaumont, C. J. and Sen,* *v.* SALUBAI. I L R 174 I C 42 40 Bom L R 106=A I R

——Sch II (iii)—*Proof required.*

Before a person can claim compensation under S 2 (1) (*n*) and Sch II, Cl (*iii*), Workmen's Compensation Act, it is not necessary for him to show that the number of persons employed is fifty or more in the whole business or the factory concerned, what is necessary is that this number should be employed in the 'premises' or

Held, that the finding was case within S. 2 (1) (*n*), Sch question was whether the two the same premises. (*Tek* CHAND *v.* ABDUL HAMID. A I R. 1938 Lah 855

——Sch. II (vii)—*' Handling"—Carpenter employed to repair boxes containing goods unloaded from ship in port—If workman.*

A man employed as a carpenter to mend or repair boxes containing goods which have been unloaded from a ship within the limits of a port is a person employed in the handling of goods within the limits of the port

ZAILDAR.

within the meaning of Sch. II (*vii*) of the Workmen's Compensation Act, and is therefore a workman. (*Beaumont, C.J and Sen, J.*) ELLERMAN'S CITY AND HALL LINES *v* ASIS THOMAS.
I.L R 1938 Bom. 44=173 I C. 545=10 R B. 360=39 Bom L R 1230=A I.R. 1938 Bom. 110.

——Sch. II (viii)—*'Building'—Hogla shed.*

A Hogla shed is a building within the meaning of Sch II Cl (*viii*) of the Workmen's Compensation Act, although it is erected for a temporary purpose and is some sort of a flimsy pavilion. (*Derbyshire, C J. and Mukherjea, J.*) KALOO & SONS *v.* OFATANNESSV BIBI. 42 C W.N. 803.

——Sch. II (x)—*Construction—"Working.... pipe line"—Meaning of—Cooly employed to guard at night machinery to test water pressure in water main—If employed in working a pipe line—"Workman."*

the pipe line The Court ought rather to give a wider than a narrower interpretation to the expression. The test is really whether when a man meets with an accident arising out of and in the course of his employment, he was in the position in which he was when the accident occurred because of the work specified in the schedule. ether active or

texts the word cance, in con- nore restricted e which helps to make the machine work. A narrower sense is intended in the expression "working a pipe line" in Cl. (*x*) of Sch. II, the Act intended to give rather more extended protection to persons employed in factories and mines than to persons employed in other capacities The Bombay Municipality who were the employers in charge of the water supply for Bombay, in order to test the efficiency of the system and to test the pressure in the

widow claimed compensation under the Workmen's Compensation Act.

Held (per Beaumont, C. J. and Sen, J.: Norman, J. dis.), that the coolies were employed in the working of the pipe line and were workmen as defined by the Act, to o be sole the

I.L R. 1938 Bom. 164=173 I.C 673=10 R B. 367=40 Bom L.R. 12=A I.R. 1938 Bom 155 (S B).

WRIT OF PROHIBITION. *See* PROHIBITION—WRIT OF.

WRONGFUL ATTACHMENT. *See* TORT.

ZAILDAR—*Appointment of—New lambardar appointed by Commissioner after sanctioning candidature—*

WORKMEN'S COMP. ACT (1923), S. 3.

Spargo, J.) BOMBAY BURMA TRADING CORPORATION, LTD. *v.* DAW
178 I

——S. 3 (1)—*Liab*
obedience of rules—E
and Indian Law.

Where a workman meddles with machinery, which he is forbidden by specific rules to touch, and attempts to effect repairs which are not part of his work, and sustains injuries during the process, he is not entitled to compensation. The English Law is radically different from the Indian Law in this respect Under the English Law compensation is disallowed, if it is proved that the injury sustained is attributable
misconduct of that workman. I
force in Burma, the sole question
man wilfully disobeyed a rule devi
securing the safety of workman, and not whether that disobedience amounted to misconduct, serious or otherwise. (*Baguley and Mosely, JJ.*) MAUNG BA TUN *v.* U OHN KHIN 177 I C. 626=11 R.R 154=

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The
Workme
be deter
Act and cannot be departed from on grounds of sentiment. Where in the case of a loss of the index and middle fingers of a labourer, compensation is awarded as for loss of the arm below the elbow an appeal against such a decision involves a substantial question of law. (*Ismail, J*) JAGANNATH BRIJ RAJ *v.* SOEMBAR.
1938 A W.R. (H C) 684=1938 A L J. 1007.

——Ss 8 (4) and 9—*Death of an employee—Allotment of compensation to dependant—Subsequent death of dependant—Employer, if entitled to refund of amount paid.*

It is clear that once an allotm
a dependant or a distribution
among several dependants is mad
allotted or distributed becomes the property of the defendant and if the dependant dies, the said sum being his property will devolve on his or her heirs. The right of an employer to get a refund under Cl. (4) of S. 8 can only arise when a workman dies without any dependant. S 9 has no application to a case where money has been allotted to dependant on the death of an employee. (*Venkataramana Rao and Abdur Rahman, JJ*

10 R.M
A.I

——S. 9—Applicability—Allotment made to dependant on death of employee. *See* WORKMEN'S COMPENSATION ACT, SS 8 (4) AND 9
I L R 1938 Mad. 716=1938 M W.N. 124=
47 L W. 159=(1938) 1 M L J. 571.

——S. 10—*'Claim'—Meaning of—Demand by workman to foreman of railway for compensation—Sufficiency.*

A claim within the meaning of S. 10 of the Work-

large concern like a railway company, a demand by a workman to a foreman for compensation is not a claim within the meaning of the section. (*Derbyshire, C J. and Mukherjea, J.*) SALAMAT *v.* THE AGENT, EAST

WORKMEN'S COMP. ACT (1923), S. 23.

INDIA RAILWAY CO. I L R. (1938) 2 Cal. 52=

only be decided in each particular case with reference to the facts and circumstances of that case. Where the workman on returning to work three months after the accident was re-employed by the same employer in the same workshop at the same rate of wages and he continued *in that employment at those wages until long* after the period of six months from the happening of the

AGENT, EAST INDIA RAILWAY CO.
I.L.R. (1938) 2 Cal. 52=42 C.W N. 341=
A.I.R. 1938 Cal. 348.

other statute imposing a further time limit for bringing his proceedings. (*Derbyshire, C. J. and Mukherjea, J.*) SALAMAT *v* THE AGENT, EAST INDIA RAILWAY CO.
I L R. (1938) 2 Cal. 52=42 C W.N. 341=
A.I R. 1938 Cal. 348.

——S. 12 (1)—*'Contractor'—Person supplying labour.*

A person who does not contract to do the whole or any part of the work but merely supplies labour at so much per head, is not a contractor within the meaning
ompensation Act, and
right to indemnity
and Mukherjea, J.)
BIBI.
42 C W.N. 803.

——Ss 23 and 32—*Examination of witnesses—Issue of commission—Power of Commissioner.*

There is nothing in the body of the Workmen's Compensation Act which empowers or authorises the Commissioner to have evidence taken on commission. S. 23 invests the Commissioner with powers of the Civil Court
Code only for the purpose of taking
th and of enforcing the attendance of
mpelling production of documents and
O. 26, C. P. Code, which contains rules
to commissions to examine witnesses is
not mentioned in R. 38 of the rules made under S. 32 of the Act. This omission indicates the want of power or jurisdiction in the Commissioner to issue commissions to examine witnesses Proviso (*b*) to R. 38 cannot be read as authorising the Commissioner to adopt a rule of procedure entirely outside and unconnected with the scope of the rules of procedure laid down by the rules. (*Mya Bu and Sharpe, JJ.*) SINGH *v.* BURMA RAILWAYS. 1938 Rang L R 641.

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within the meaning of S. 115, C. P. Code or S. 44, Punjab Courts Act, and a petition for revision lies against an order passed by him provided all the other necessary conditions are present. (*Tek Chand, J.*)

WORKMEN'S COMP. ACT (1923), S. 31

G. D. GIANCHAND *v.* ABDUL HAMID. A.I.R. 1938 Lah. 855

——S 30—Appeal—Question of
See WORKMEN'S OMPENSATION A
1938 A W R. (H C) 681=

——S. 30—*Finding by Commiss was workman—Interference in appea*

Where there is evidence upon whicl could come to the conclusion that t servant and a workman within the me it would be wrong for the High disturb his finding although there suggesting that the deceased was an independent contractor (*Derbyshire, C J. and Costello, J.*) MANAGER, GOURI SANKAR JUTE MILLS *v* KHANTAMONI DASI 42 C W N. 1093

——Sch. II (1) and S. 2 (1)—*'Workman'—Conductor of motor omnibus*

A conductor of a motor omnibus, though not employed in operating is employed "in connection with" the operating of the motor omnibus, and is, therefore, a

The purpose of making, altering, repairing, ornamenting and finishing articles for use, transport, or sale

whole clause denotes work done physically upon the article. A person employed as a labourer in a cotton godown and who helps to unstack cotton bales or remove them from the godown is a workman falling within Cl. (*iii*) of Sch. II of the Workmen's Compensation Act, the whole process of taking down the bales from the stack in the godown, its opening and examination in order to enable a purchaser to take a sample, and its closing up and removal constitutes a process which may be adapting it for transport or adapting it for sale (*Beaumont, C. J. and Sen, J*) SAVLARAM *v* SALUBAI.

174
40 Bom L R. 106

——Sch. II (iii)—*Proof r*

Before a person can claim (1) (*n*) and Sch. II, Cl. (*iii*), Act, it is not necessary for him to show that the number of persons employed is fifty or more in the whole business or the factory concerned; what is necessary is that this number should be employed in the 'premises' or within the 'precincts' Where the facts found were that the employer carried on business in two factories, in one of which 40 persons were employed and in the other 11 persons, and that both the factories were really branches of one and the same business.

Held, that the finding case within S. 2 (1) (*n*), question was whether the t the same premises. (*Tek Chand, J*) G. D GIANCHAND *v.* ABDUL HAMID. A I.R 1938 Lah 855

——Sch. II (vii)—*'Handling"—Carpenter employed to repair boxes containing goods unloaded from ship in port—If workman.*

A man employed as a carpenter to mend or repair boxes containing goods which have been unloaded from a ship within the limits of a port is a person employed in the handling of goods within the limits of the port

ZAILDAR.

within the meaning of Sch. II (*vii*) of the Workmen's Compensation Act, and is therefore a workman

BIBI. 42 C W N. 103.

——Sch. II (x)—*Construction—"Working.... pipe line"—Meaning of—Cooly employed to guard at night machinery to test water pressure in water main—If employed in working a pipe line—"Workman."*

Per *Beaumont, C. J. and Sen, J.*—The expression, "working a pipe line", in Cl. (*x*) of Sch. II of the Workmen's Compensation Act covers all work necessary in the view of the employers for the effi working of give a wider sion. The an accident loyment, he which he was when the accident occurred because of the work specified in the schedule. His particular share in the work whether active or is irrelevant.

n some contexts the word wide significance, in con it has a more restricted thing positive which helps to make the machine work. A narrower sense intended in the expression "working a pipe line" in Cl (*x*) of Sch. II, the Act intended to give rather more extended protection to persons employed in factories and mines than to persons employed in other capacities. The Bombay Municipality who were the employers in charge of the water supply for Bombay, in order to test the efficiency of the system and to test the pressure in the water mains fixed to the stand pipe a recording instrument which had to be kept working for 24 consecutive hours Two coolies who were employed in the Wate ed on guard to the instrument of the road and one of the r vehicle. ill Workmen'

Held (per Beaumont, C. J. and Sen, J., Norman, J dis.), that the coolies were employed in the working of the pipe line and were workmen as defined by the Act, and the widow of the deceased was therefore entitled to compensation.

Norman, J—The deceased could not be said to be employed in the working of the pipe line when his sole duty was to prevent some external interference with the knowledge whatever of and was not a work. and Norman, JJ) PAL CORPORATION I.L R. 1938 Bom. 164=173 I C 673=10 R B. 40 Bom L.R. 12=A I.R 1938 Bom 155 (B.)

WRIT OF PROHIBITION. *See* PROHIBITION, WRIT OF.

WRONGFUL ATTACHMENT. *See* TORT.

ZAILDAR—*Appointment of—New lambardar appointed by Commissioner after sanctioning*

ZAILDAR.

Non lambardar not an approved candidate before [illegible]

[illegible] appointing him is valid, although he was not an approved candidate before the Collector who made the first appointment. (*Garbett, F.C.*) RUR SINGH *v.* GURBAKHSH SINGH. 17 Lah L T. 1.

ZAILDAR.

——*Appointment of—Non lambardar claimant who is not an approved candidate—Right to appeal to Commissioner.*

The Commissioner can, in his discretion, entertain an appeal of a non lambardar claimant in a *Zaildari* or *sufed poshi* case, not approved as a candidate by the commissioner. (*Dobson, F.C.*) KARTAR SINGH *v.* LACHMAN SINGH. 17 Lah.L.T. 12.

II—SELECT ENGLISH CASES.

ALIENS ORDER (1920), Art. 18, para 4 (d)—*Alien—Possession of an altered passport—Alien igno-*

officer, ... or other person lawfully acting in the execution of the provisions of this order he . . . . cl (*d*) without lawful authority uses

thority.

having in . . . knowledge of the fact that it is forged. The words of the article do not put any such burden upon the prosecution and the words of the article negative the view that the prosecution is required to carry such a burden. CHAJUTIN *v.* WHITEHEAD. (1938) 1 K.B 506=107 L.J.(K B) 270=158 L T. 277.

APPORTIONMENT — *Dividends—Life tenant—Death of—Sale by trustees of securities 'cum dividend' Effect of on dividend accrued during the lifetime of life tenant—If proceeds to go to remainderman or apportionable between life tenant and remainderman.*

A testator created certain trusts for two ladies in equal moieties as tenants for life and subject to those life

purchase price as capital, but ought to apportion it as between, on the one hand, the remainderman, and on the other, the executors of the tenant for life, by paying over to the executors of the tenant for life, out of the purchase price the sum of 2,160*l*. odd representing the

BROKER.

of dividend accruing on the securities so sold, to the death of the tenant for life. *In re* STOKE'S WILL TRUSTS GUNN *v* RICHARD (1938) 1 Ch. 158=107 L J (Ch.) 122=158 L T. 404.

BILL OF EXCHANGE—*Words "not transferable" across bill—Bill made payable only to named payee*

the amount of the bill and interest.

Held, that the words "not negitiable" coupled with the words "to the order of I.C. Co , Ltd , only" in the bill were sufficient to prohibit the transfer of the bill and that the plaintiff's action was not sustainable. *National Bank* v. *Silke*, (1891) 1 Q B. 435, Cons HIBERNIAN BANK LTD , *v.* GYSIN AND HANSON. (1938) 2 K B. 384=158 L.T. 525.

BROKER—*Stocks and shares—Shares bought for the customer and shares deposited by customer sold out by brokers—Subsequent purchase of the same by brokers at profit—Nature of transactions—Fraud—Nature of the brokers' transactions kept secret from customer—Rights of customer—Conversion—Damages.*

O Company carried on business as stock brokers.

found that O. company was doing this business as a scheme of fraud. The company purporting to buy and in fact making valid contracts of purchase for clients, contemporaneously sold shares of the pany and used their clients' shares

CINEMATOGRAPH ACT (1909), S. 9.

sales. When the client closed his account, the brokers O. company went into the market and bought the required shares at the then market price which was very much lower than the rate at the date of the original order by the client.

Held, that the transactions as far as the company were concerned were part of a fraudulent system of business, and were themselves fraudulent in their inception, continuance and completion. A broker is not under an obligation to retain for his client the specific shares which

forfeited the right to an indemnity in respect of transactions which form part of the fraud. The principal on discovering the fraud is entitled to recover back the money paid on the footing of an honest transaction, giving credit for any benefit which he has received. As to the deposited shares, in the circumstances of the case the company never had any right to deal with them. If the transaction had been originally honest, the company would only have had a special property which, on the facts of the case, even had the transaction been honest throughout, would not have given them the right to dispose of the shares, for there never had been default. On the actual facts the disposa
amounted to nothing short of
on each occasion on which t
vested in him a right to damag
would be measured by the va
date of the conversion SOLLOWAY *v.* MC

1938 A C 247=107 L

CINEMATOGRAPH ACT (1909), Ss.

County council—Power to issue licences, Delegation of, to justices—Application to justices for approval of plans for premises—Nature of—Extra-judicial proceeding—Writ of mandamus *or* certiorari—*If can issue.*

S. 2 of the Cinematograph Act, 1909, confers on the county council the power to grant licences to such persons as they think f
the licence for the pur
subject to such terms
determine. S 5 permitted the county council to delegate this power to justices sitting in petty sessions A county council so delegated its powers to justices In the statute of 1909
provision
erected.
premises
applicatio
when the
for licenc
was taken out for a writ of *mandamus*

Held, that the justices sitting f
purpose of considering plans of
constructed, are not engaged in a
such as may be brought to the notice of the Court for the purpose of the prerogative writ of *mandamus* or *certiorari*. THE KING *v.* BARNSTAPLE JUSTICES: CARDER, *Ex parte.* (1938) 1 K B. 385=
107 L.J. (K.B.) 127=158 L T. 403

COAL MINES ACT (1911), Ss 55 102, sub-S. (8)

—Dangerous machinery—Unfenced—Repairs to machinery—Temporarily unfenced to test machine—Unfencing necessary then—Accident at the time—If company exempt under S. 102, sub S. (8).

One morning the respondent, who was employed by the appellant colliery company in one of its collieries sustained injuries by coming into contract with an exposed and dangerous part of the machinery used in the mine which was not at the time securely fenced. Under S. 55 of the Coal Mines Act, 1911, it is provided that "every flywheel and all exposed and dangerous parts of the machinery used in or about the mine shall be securely fenced," and the company admitted that it fell under this section but relied on S. 102, sub-S. (8) which enacts that "the owner of a mine shall not be liable to an action for damages as for breach of statutory duty in respect of

the machine the day before the accident and made certain adjustments and repairs to the machine. The next morning he had to fix a pulley on to the machine and to enable him to do so he had to stop the machine and remove the guard protecting the chain, etc. Having fixed the pulley he set the machine in motion to test its running and in order to observe its action he did not and could not replace the guard round the machine. Meantime the respondent came on the scene to see what was being done and when getting back to his place he slipped on the pavement and his right hand, which he put out to save himself, was caught in the unprotected

from liability under S 102, sub S. (8). COLTNESS IRON COMPANY, LIMITED *v.* SHARP.
(1938) A.C. 90=106 L J. (P C) 142=157 L T. 394.

COMPANY—*Advances to subsidiary companies—*

The applicant from time to time made advances by way of loan to two subsidiary companies at the request of the Secretary of the main company At a subsequent

repay the loan on the theory of ratification because there was no proof that a quorum of directors competent to act had knowledge that the payments were made and that the payer expected to be repaid by the company. *In re* CLEADON TRUST LIMITED.
(1938) 1 Ch 660=107 L.J. (Ch.) 218.

———*Borrowing money by — Memorandum and promissory note signed by a director and secretary —Seal of company not affixed—If signed personally by borrower as required by S. 6 of Money-lenders Act (1927)—Note indicating that borrowing was in consolidation of prior loans—Sufficient memorandum.*

COMPANY.

A company B. G., Ltd, borrowed money from time to time after 1931 from a money-lending company G. I. F, Ltd., and on 1st December, 1936, entered into a contract with G. I F., Ltd., under which G I. F, Ltd, agreed to advance 4,950*l* upon the security of a promissory note and B.G, Ltd, agreed to pay interest at 27½ per cent. per annum thereon and pay the amount in certain instalments This was the sum that was then owing to G I. F, Ltd., on previous borrowings by B G., Ltd., as for principal and accrued interest. In default of payment the whole amount became payable A memorandum of the contract and the promissory note were executed and signed by a director and secretary of the B G, Ltd, "for and on behalf of B. G, Ltd." But they were not sealed with the company's seal. The B G. Co, defaulted in payment of the instalments and G I F. thereupon applied for the amount due in the liquidation of B G., Ltd It was contended by the liquidators that the contract was unenforceable as (*i*) the memorandum was not signed by the company personally and was not sealed, and (*ii*) that the memorandum was bad as it did not specify full particulars.

Held, that the contract was duly executed in accordance with S. 29 of the Companies Act 1929 and was therefore signed "personally by the borrower" within the requirement of Money len

not necessary that it should be

randum was sufficiently full in

that it was in consolidation o

BRITISH GAMES, LIMITED (1938) 1 Ch 240 = 107 L J. (Ch) 81 = 158 L T. 239.

Deferr

Reduct

reorganization of its capital in which a reduction of its capital from 95,000,000*l* to 89,565,859*l*, was an inte

tely for approval by extraordinary resolution; and the third, a corresponding meeting of deferred shareholders only, similarly convened to approve of the scheme as specially affecting their class interests. At the extraordinary general meeting, about 1,600 shareholders of all classes were present. They were invited to remain seated as they were until the business of the last of the three meetings had concluded. The class meetings of the holders of ordinary shares followed. The class

COMPANY.

meeting of the holders of the deferred shares then took place. The holders of shares of other classes than deferred shares were in the hall during this meeting, but did not take part in it. The substantial opposition to the scheme came from deferred shareholders although the ordinary shareholders were not unanimous in its favour. The proceedings were conducted in such a manner as to satisfy those present and no objection was taken by any of the shareholders present at either of the class meetings to the physical presence in the hall during the conduct of such meeting of holders of shares of a class other than that affected. A poll was demanded. The Chairman then announced the result of the polling and declared that the resolutions laid before the extraordinary general meeting had been duly carried as special resolution and that those before the respective class meetings of the holders of ordinary and deferred shares had been duly carried as extraordinary resolutions with the requisite majority The company presented a petition to the High Court of Justice praying for confirmation of the capital reduction involved in the resolutions passed. The reduction of the company's capital was confirmed successively by Eve, J. and the Court of Appeal. A single deferred shareholder appealed to the House of Lords.

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deferred

Per *Lord Blanesburgh*.—That the fairness or other wise of the proportion in which the ordinary and the

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classes to

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such incidence was not otherwise authorised by the Articles was either asked for or given. So the reduction cannot be regarded as having been authorised by the

to the meeting being so conducted and the resolution was accordingly a valid extraordinary resolution passed at a meeting of the deferred shareholders.

Per *Lord Blanesburgh and Lord Maugham*—Art. 44 provided that the company may by special resolution reduce its capital by paying off capital, cancelling capital which has been lost or is unrepresented by assets, reducing the liability on the shares, or ot as may seem expedient......Hence by this A

COMPANY.

company had power to reduce its capital in any way authorized by the Companies Act, 1929.

Per *Lord Russell of Killowen.*—In view of the large number of votes in favour of the scheme given, at the

purporting to modify the rights of the holders of the ordinary and deferred shares respectively, based as they

On the application under S. 55 of the Act to confirm the reduction, the Court, whether or not petition is opposed, has a duty to consider whether the proposed reduction is a fair or an unfair one. The holders of

of the directors and experts. The question is to be decided with a view to the future success of the company. The shareholders acting honestly are usually much better Judges of what is to their commercial advantage than the Court can be. But this proposition may not be of much value as a guide, when it is proved that the majority of the class have voted or may have voted in

by way of fraudulent preference—Payments by customer to company during the period—If can be set off.

A company *F* carrying on business as contractors for tar-paving and similar work was for a long time a customer of the respondent companies (*W* and *I*) and had considerable dealings with them. The respondent companies supplied goods to the *F* Co loans to it and in that way the *F* Comp debted to them and the *W* Company to the *F* Company for work done by The *F* Company was wound up. D months prior to the commencement of (13 1 1937)

could not be allowed. *In re* B. B FOWLER LIMITED (1938) 1 Ch. 113=107 L J. (Ch) 97=158 L.T. 369.

CONTRACT—*Agreement by a married woman with a thi ba*

Th

CONTRACT.

by in consideration of the plaintiff persuading her husband to go to New Zealand and for consenting to forego the consortium of her said husband, the defendant promised to pay to the plaintiff an allowance at the rate of

tioned therein. d to New Zea- s agreed. The lid as founded upon an illegal consideration and opposed to public policy.

invalid. contem- There ontract is enforceable which is inconsistent with maintenance of the marriage tie, in the absence of any immorality or illegality, in the contract.

Held by the Court of Appeal, that the consideration not the consent of the of her husband. The agreement of separation, ration for a period and ll remain as husband or the financial means living together. The a persuasion by the wife ealand in consideration to pay the plaintiff a weekly allowance. DAVIES *v* ELMSLIE (1938) 1 K B. 337=107 L.J. (K B.) 113=158 L.T. 362.

——*Breach of—Damages—Agreement not to disclose statement by party confessing offences committed by him and others—If valid—Public policy—Disclosure n—Expulsion of party making ion—Damages if to be nominal*

workman in the printing trade National Union of Printing, Bookbinding and Paper workers, a trade union of his trade. It comprises in its membership all workers engaged in those works. The defendants are the printers of two papers. They had for several years organised cross word puzzle competitions. Up to some date in 1932 they had employed the plaintiff *H* as a sorter in their competition department. The post of sorter gave an

and lost several benefits thereby, for example, unemployment benefit, etc. Thereupon the plaintiff brought this suit for damages for breach of contract of secrecy which

revealed a crime
l any agreement
rom the ordinary

CONTRACT.

was a valid agreement, and the defendants disclosed the confession in breach of the agreement, yet the damages were due to the plaintiff's own wrongful act, namely, having knowingly acted to the detriment of the trade union. That act was the *causa causans* of the damage suffered by him by losing the membership and the wrongful disclosure was only the *causa sine qua non* He will therefore be entitled only to nominal damages. *Weld-Blundell v Stephens*, (1919) 1 K B. 520. (1920) A. C. 956, Appl HOWARD v. ODHAMS PRESS, LIMITED. (1938) 1 K B 1= 106 L.J (K B.) 675 = 157 L.T. 191.

on the ground of his adultery with the plaintiff. After the date of the decree *nisi*, the defendant promised to marry the plaintiff *after* the decree *nisi* against him was made absolute Sometime after the promise, in due course the decree *nisi* was made absolute in July but the defendant refused to marry the plaintiff and in 1934 married another lady The plaintiff thereupon brought the action for damages for breach of promise to marry her. The Court of Appeal held in (1936) 1 K B 111 that the promise was unenforceable as against public policy because it was entered into at a time when the marital obligation of the defendant with his wife had not been fully severed.

They owe no duties each to the other to perform any kind of matrimonial obligation. The custody of the children and the maintenance of the wife, if petitioner, is provided for by the Court. In those circumstances there is no interference with matrimonial obligations by a promise made to marry a third person There is

(1938) A C. 1 = 106 L J. (K.B.) 641 = 157 L.T. 340.

——*Hire purchase—Vendor not owning the article on date of agreement—Purchase by vendor later—Delivery of same to hirer—Hirer accepting it—Hire in arrear—Vendor taking possession terminating the* ... *showed no* ... into nego- ... chase of a

CONTRACT.

depreciation money and arrears of instalments due, the defendant pleaded that it was an implied condition of the agreement that the plaintiffs owned the lorry on the date of the agreement that as the plaintiffs admittedly did not own it on that date but only some days later, they had no title to hire and the contract was bad.

Held, that the material time when the implied condition as to warranty of title arises is the date when the bailment or delivery takes place and not the actual moment of signing of the agreement. On the date of delivery the plaintiffs were the owners and therefore the agreement was satisfied. *Karflex, Ltd*, v. *Poole*, (1933) ... MERCANTILE UNION GUA- ... LIMITED v. WHEATLEY. ... 490 = 107 L.J. (K.B) 158 = 158 L T. 414.

——*Invalidity—Nullity of marriage—Marriage* ...

... law to say that in ... through fear, the ... person of ordinary courage and resolution to yield to it. Whenever from national weakness of intellect or from fear—whether reasonably entertained or not—either party is actually in a state of mental incompetence to resist pressure improperly brought to bear, there is no consent. Observations of Brett J in *Scott v Sebright*, (1888) 12 P.D. 21 Foll. HUSSENI OTHERWISE BLITZ v. HUSSEIN. (1938) P. 159.

——*Mistake—Payments under mistake—Mistake of fact, what is—Knowledge of an agent of company of the correct amount payable—Agent not aware that another agent was overpaying by mistake—If company can* ...

... any with its ... at *N* and a ... factory the ... They there- ... ith the local ... at a minimum rate of 375*l*. per quarter. By a supplemental contract of 1927 the payment was reduced to 100*l*. a quarter. This was arranged by the plaintiff's managing agent at Glasgow but by an oversight he did not communicate the fact of reduction to the branches at *N* and *S* The Council at *S* also by mistake was sending its ... [illegible] ...

Held, that the mistake was a mistake [illegible] a mistake of law. The fact that the [illegible] of the company knew of the [illegible] immaterial inasmuch as he had [illegible] being acted upon. The cause of [illegible] poses of limitation from the date [illegible] and demand is not necessary [illegible] completion of the cause of [illegible] BEET SUGAR CORPORATION, LIMITED [illegible]

CONTRACT.

URBAN DISTRICT COUNCIL. (1937) 2 K.B. 607= 106 L J. (K B.) 885=157 L.T. 450.

——*Vendor and purchaser Contract to sell land—Payment to be by instalments—Failure in payment of certain instalments—Clause providing for forfeiture of instalments paid if default in payment of further instalments—If in the nature of a penalty—Court, if can relieve, against it and direct return of instalments*

etc., belonging to the defendant company in Tasmania Of this 4,000*l*. was paid by the date of the agreement and the balance was made payable in certain instalments on the dates specified in the agreement. Cl. (12) of the agreement provided that "if the purchaser shall make default in the payment of any of the other instalments mentioned in cl. (2) hereof or any part thereof on the due dates as provided in the said clause the land company may . . . .

feited to the Land company and this contract shall subject as aforesaid thereupon become absolutely null and void. . . . ." Certain sums were paid by the plaintiff in instalments as provided in the agreement but subsequently he failed to pay an instalment that fell due in May, 1931. Thereupon the defendan

notice that they rescinded the contract unde

the agreement and forfeited the amounts

In an action to recover the instalments alre.

Held, that though cl. (12) provided that on rescission the contract became null and void, it did not mean that the contract became void *ab initio* in the sense of treating the contract as though it had never existed at all. The claim to refund could not be as for recovery of money had and received because the money was rightly paid under the contract and thereon it became the money of the defendants. The provision in the contract that if the plaintiff should fail to pay any of the instalments the defendant should be entitled to retain the money paid is not in the nature of a penalty as there is nothing unconscionable in the stipul

nothing unconscionable on the part of t

has contracted to part with his land on

enforce the contract if he so desires.

case where the plaintiff says that he is now willing to carry out the contract and wants relief on that basis. *Steadman* v. *Drinkle*. (1916) 1 A.C. 275, Dist. MUSSEIN v. VAN DIEMEN'S LAND COMPANY. (1938) 1 Ch 253=107 L.J. (Ch.) 136= 158 L.T. 40.

COPYRIGHT—*Copyright Act* (1911), *S.* 6—*Copy right in idea.*

"A person may have a brilliant idea fo

for a picture, or for a play, and one which

him to be original, but if he communicates

an author or an artist or a playw

which is the result of the commur

the author or the artist or the

right of the person who has cloth

whether by means of a picture, pl

owner of the idea has no rights in that product. On the other hand, if an author employs a shorthand writer to take down a story which the author is composing, word for word in shorthand, and the shorthand writer then transcribes it, and the author has it published, the author is the owner of the copyright and not the short-

COPYRIGHT.

hand writer. A mere amanuensis does not, by taking down word for word the language of the author, become in any sense the owner of the copyright." DONOGHUE v. ALLIED NEWSPAPERS, LIMITED. (1938) 1 Ch. 106=157 L. T. 186= 107 L.J. (Ch.) 13.

——*Infringement — Conversion — If cumulative or alternative damages—Limitation of time for*

rsion—Limitation

0—Act of conver-

sued the defendants for damages for infringement of copyright and for conversion, in that the defendants incorporated into his book part of the plaintiffs' book The question arose as to the period of limitation nature of the damages, etc. It was held that the damages were cumulative and not alternative. On the question of limitation,

Held, by the Court of Appeal (MacKinnon, J., dissenting) that in respect of the claim in conversion the period is six years running from the date of conversion

hree years

us is not a

based on

Held, by the Court of Appeal that the act of conversion as at the date of which the value of infringing copies ought to be ascertained is not the order to the binders to bind the sheets which contained the infringing matter but the delivery by the defendant of the

PANY, LIMITED v. CAXTON PUBLISHING COMPANY, LIMITED. (1938) 1 Ch 174= 107 L J (Ch) 99=158 L.T. 17.

——*Publisher of pictures—Publication of pictures outside Canada prior to 1924—Right to copyright in Canada—Canadian Copyright Act of 1924—Non-compliance with—Imperial Copyright Act of 1914, S. 25—Certificate of Secretary of State—Effect of.*

The appellant, a publisher of fine art colour prints, residing in England, brought an action against the respondents for publishing in Toronto, a number of

s. The appellant

opyright in virtue

Act, or (2) the

pictures in ques-

tion were made before 1924 outside Canada.

Held, (1) that S. 42 of the Canadian Copyright Act of 1921 is only a transitional enactment designed to prevent the loss of rights existing before 1st January, 1924, and the pre-existing copyright must have been copyright in Canada. As the appellant never acquired copyright in Canada under the prior Act of 1906 and

n Canada before 1st

the copyright thereof

protect his rights, his

(2) The certificate of

under S 25 of the

1923, did not and

Act to Canada. His

bringing into opera-

would for the purposes

of the rights conferred by the Imperial Act (but for those purposes only) be treated as if it were a Dominion to which the Act extended The Imperial Act conferred no right in Canada and it was only in respect of the rights conferred by it that Canada was to be treated as if the Act extended to it. The effect of the certificate

COSTS.

would be that a Canadian author writing in Canada would become a person entitled to 'the rights conferred' by the Imperial Act. So the Imperial Act conferred no rights in Canada to the appellant. MANSELL *v.* STAR PRINTING AND PUBLISHING COMPANY OF TORONTO (1937) A.C 872=106 L J. (P C.) 147=157 L.T 445.

COSTS—*County Court Rules, 1936—Scale of costs—Jurisdiction of Judge to increase the scale of costs—O. XLVII of the County Court Rules.*

O XLVII of the County Court Rules, 1936, provides as follows:—R. 1 "Subject to the provisions of any Act or Rule, the costs of proceedings in a County Court shall be in the discretion of the Court". R. 2. "The Scales of Costs in Appendix B shall have effect for the purpose of regulating the costs of proceedings in a County Court subject to and in accordance with the Rules of this Order and the directions contained in the Scales of Costs". Rule 5 provides for certain scales. R. 13 provides for power in the Judge to award costs on such scale as he thinks fit where he certifies that the question in dispute was of importance to a class or body of persons or involved a difficult question of law or that the decision of the Court affects issues between the parties beyond those directly in the proceedings There were certain other rules providing for fees beyond the maximum prescribed

higher costs as under R. 13. MURRAY *v.* REDPATH, BROWN AND COMPANY (1938) 1 K B 449=107 L J. (K B) 166=158 L T. 64.

CUSTOMS AND INLAND REVENUE ACT 1889—*Estate duty—Life assurance policy—Assignment of*

assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit".

Held, the meaning of the sub-section is that "where the policy is partially kept up by such person for the benefit of a donee whether nominee or assignee, the charge shall extend to a part of the policy moneys in

tion is to be determined by events which take place after the donation. THE LORD ADVOCATE *v.* INZIEVAR ESTATE (1938) A C. 402=107 L J. (P.C) 65=159 L.T. 97.

DEBT.

DEBT—*Accord and satisfaction—Discharge of one of joint debtors by operation of law—Other joint debtor if released—Sanction of a scheme of arrangement under S 153 of the Companies Act, 1929—Effect.*

Two companies, *S* and *G*, became jointly or jointly and severally liable to pay, to a third company *T* a sum of money. A scheme of arrangement between one of the companies *S* and its creditors was sanctioned by the Court under S. 153 of the Companies Act, 1929. The creditors of the *S* company accepted the scheme in full satisfaction and discharge of all their claims against the company. The *T* company also accepted the scheme as a discharge of all liability to them of the *S* company but did not intend thereby to give up their claims against the *G* company. The question arose if the *G* company was also released.

Held that the scheme did not release the *G* company from its liability in respect of the debt to *T* company. The effect of S. 153 of the Companies Act is to give to a scheme when sanctioned by the Court under the section a statutory operation. The scheme when sanctioned by the Court becomes something quite different from a mere agreement signed by the parties. Accord and satisfaction between a creditor and one of several debtors, discharges the other debtors unless it appears from the terms of the agreement or the surrounding circumstances that the creditor intended to reserve his rights against them. A discharge of one of several

not release
S, LIMITED,
.(Ch.) 365=
57 L.T. 258.

——*Limitation—Arrangement between creditor and debtors—Creditor provided with farm produced and house—Continuous acknowledgment of debt—Statute bar—Limitation Act,* 163.

he debtors
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interest on
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charged by
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aid by the
plied farm
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claimed to be

entitled as a creditor under the deed to the sum advanced by him by way of loan. The claim was rejected by the trustee of the deed.

Held, that the arrangement made in 1927 clearly acknowledged the existence of the debt for it provided for the future discharge of interest in respect of it. The services rendered to the claimant in pursuance of the

constitutes a valid enforceable claim against the debtors and the trustee appointed under the deed of arrangment should admit the same to proof as the carrying out of the arrangement of 1927 takes the case out of the Limitation Act, 1623. *In re* WILSON: *Ex parte* WILSON

INCOME-TAX.

——*Profits or gains of business—Subsidiary companies—Payment of share of profits in lieu of services rendered—Reduction for income-tax purposes—Income-tax Act*, 1918, *Sch. D, R.* 3 (*a*).

A company which was carrying on business as manu- [illegible]

their [illegible] technical and financial knowledge and experience and giving to the company and its directors advise to the best of their ability respectively [illegible] relating to manufacture and finance a [illegible] pany's products."

Held, that the sums paid to [illegible] in respect of the 20 per cent of the profits payable to [illegible] was a disbursement or expense "wholly and exclu- [illegible]

it should be deducted from arriving at the profits gains of the company for income tax purposes. BRITIS SUGAR MANUFACTURERS LTD. *v.* HARRIS.

(1938) 2 K B 220 (C.A)=107 L J. (K B) 47[illegible]

INSURANCE—*Life Insurance — Husband taking policy for benefit of his wife—Death of wife—Husband continuing to pay premiums till mat*[illegible] *husband's estate—Lien on the policy* [illegible] *premiums paid.*

A husband took out a policy of insura[illegible] life for the benefit of his first wife At [illegible] death the policy had no surrender val[illegible] death, he continued to pay the annual [illegible] maturity when the policy moneys were pa[illegible] nistrators of the wife's estate and were placed on deposit in a bank. The husband in the [illegible] appointed his second wife executrix

Held that the husband was a [illegible]

[illegible]

with a certain motor cycle. In July, 193[illegible] currency of the policy the defendant while [illegible] motor-cycle was involved in an accident where[illegible]

in thr[illegible]

[illegible] close two previous [illegible]

INSURANCE.

without a license and for driving a motor-cycle in a dangerous manner. The defence was that it was not a material fact because the company had accepted policies in certain other cases with knowledge of such convictions there.

[illegible] e allegations regarding this defence should [illegible] the allegations amounted *to no more* [illegible] evidence of want of materiality. The [illegible] *ed discovery by the plaintiffs of all docu*ments in their possession relating to policies which have *been granted or refused by the plaintiffs, where disclosure* had been made of similar convictions.

[illegible]

tion had been disclosed to them by the applicants, did not decline the risk or raise the premium, is not relevant [illegible] If discovery had been asked for, or could [illegible] sked, of documents relating to cases where [illegible] s after discovering the existence of similar [illegible] sclose, [illegible] dinary [illegible] ANTS' [illegible] , LTD. *v.* DAVIES: (1938) 1 K.B. 196 = 156 L T. 524 = 106 L J. (K B.) 433

[illegible]

The respondent company issued a commercial Motor [illegible] including [illegible] a widow [illegible] *gence of a* [illegible] the ground [illegible] *ndemnified* [illegible] ility. The [illegible] *deceased was employed by J.B who had entered into a* [illegible]

INSURANCE (NATIONAL HEALTH)

covered—namely, that described in the words in brackets in (*c*) which is in the form of an exception to an exception and thus constitutes
tract of employment' shou
to the implied limitation '
policy'. It includes a co
The deceased was being ca
in which the vehicle was engaged and as an incident of the haulage so far as *D* was concerned So the liability

INSURANCE (NATIONAL HEALTH)—*Dentist treating a patient—Claim from patient's society appro-*

and under the law now in England one is entitled to practice dentistry though he is not a dentist regis-

tered through approved societies and a medical man who treats a patient who is a member of those approved societies is entitled to obtain his remuneration not from the patient but from the society to which he belongs. Dr B supplied dental tr
the defendant society of

and to practise dentistry To claim the charges from the society and not from the patient treated, the dentist must be such a dentist under the Dentists' Acts and the plaintiff Dr B not being one registered under those Acts would be entitled to recover from the patient but not from the society BYNOE *v* GENERAL FEDERATION OF TRADE UNIONS APPROVED SOCIETY (1938) 1 Ch 164 = 107 L J (Ch) 26 = 157 L T 508.

INTERNATIONAL LAW—De facto *government*—

De jure *monarch's rights—Whether to be recognised by courts*

A company the Bank of Ethiopia, was formed under

tive of the Italian Government authorities. On 9th

INTERNATIONAL LAW.

sinia then under Italian control. In 20th June, a Government decree, valid according to the law as recog-

directors before June, and who were not, at the date of the action, acting under the direction or with the

convened.

Italian Government cannot be impugned on the ground that it was not the rightful but a usurping government

acts of that government done at any time which they were in fact the government, though not yet recognised as such by His Majesty; (4) as the former government has departed and there is no governmental authority

———*Ex Emperor of Abyssinia—Suit for recovery of amounts due under contract—Rival claim by Italy—Jurisdiction of British Court.*

The plaintiff, the ex emperor of Abyssinia instituted an action for an account of what was due under a contract made between the Director-General of Ports, etc., of Ethiopia and the defendant company which was in Great Britain It was ascertained from the Foreign Office that His Majesty's Government still recognised Ethiopia and that the Italian Gov of virtually the roved that a claim contract had been made by the Italian Government.

Held, that the Court had no jurisdiction to decide on the plaintiff' claim as there was a rival claim by Observations of lied on. HAILE TD L.J. (Ch.) 201.

th Port—Possession of ship taken by Spanish Government—Claim by the ration of ownership

he business of ship an action for a writ S. S. "Cristina" for

JUSTICE.

a declaration of ownership and for possession. The "Cristina" is a Spanish ship and was

undi

ipowni

the

put

master appointed in the name of the Government the new captain took charge the ship's expens been disbursed by the Spanish Government. The shipowners (company) then issued this writ *in rem* claiming as owners. The respondent (Spanish Government) entered a conditional appearance and stated that they were the owners or parties interested and also moved for the writ and all subsequent proceedings thereon being set aside inasmuch as it 'impleads a foreign sovereign state, namely, the Government of Spain."

Held, that the Spanish Government was in fact pleaded and they were intended to be so implead... The order sought in the present case would necessarily displace the *de facto* possession of the Spanish Government. No such writ can be upheld against the foreign sovereign state unless it consents, because a sovereign state cannot, directly or indirectly be impl... consent. COMPANIA NAVIERA STEAMSHIP "CRISTINA".

JUSTICES—*Summary jurisdictio ing that they had no jurisdiction—I state a case.*

LANDLO

produce u

the whole f

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to the second under-lease.

The plaintiffs, as lessors, granted a lease to the defendants for a term, of property *R*. The lease contained a covenant that the lessees will within two calendar months next after the execution of every assignment or under-lease of the *demised premises* or any part thereof produce or cause to be produced such assignment or under-lease or the counter-part thereof to the lessors or their agents or solicitor for registration. The defendants demised the same premises to the *M* Bank and, the same day the *M* Bank under let part of the demised premises to the defendants. The question

lease within the meaning of that covenant PORTMAN *v.* J. LYONS & CO (1937) 1 Ch 584= 106 L J. (Ch) 277=156 L T. 141.

Until her death in 1931, one Mrs. F was the tenant of a house and had sublet three rooms therein to the defen-

LEGISLATION.

was accepted by the defendant, who paid rent on that basis for some years also. In 1936 he stopped payment on the ground that all the five rooms were controlled premises under the Rent Restriction Acts and only proper rent can be claimed. It was found that the three rooms occupied by him were *controlled* rooms but

ourt Judge

ecame de-

Mortgage

Interest Restrictions Act, 1923, as on the death of Mrs. *F*, the landlord must be deemed to have come into possession inasmuch as the defendants' possession was only as trespasser. Sub S. (1) of S. 2 of the Rent and Mortgage Interest Restrictions Act of 1923 provides that

ceed against him

the agreement of

of landlord and

after Mrs. F's

ossession and the

ontrolled. Observations of Scrutton, L. J., in *Goudge* v. *Broughton*, (1929) 1 K. B. 103, discussed and distinguished. HOLDEN *v.* HOWARD. (1938) 1 K B 442= 107 L J. (K B) 163=158 L.T. 59.

LEGISLATION—*Statute within the express powers of the legislature—Other matters incidentally affected—Effect—True test of valid legislation—Milk and Milk Products Act of Northern Ireland, 1934—Construction and validity of—Act regulating supply of milk—Farmers outside Northern Ireland adversely affected—If entitled to remedy—S. 4 (7) of the Government of*

accordance with the Act and a person shall not sell milk unless he holds a licence. The appellant is one of the farmers whose farms are situate in the county of *D*

within a

he habit

Act and

ply to the

Ireland

territory and such persons are not entitled to a producer's licence under the Act, to sell milk in that

MALICIOUS PROSECUTION.

territory, (2) that the Act must be construed as imposing control over every person who within Northern Ireland sells or exposes for sale milk, whether the milk is produced within or without Northern Ireland, (3) that the true nature and character of the Act its pith and substance, is that it is an Act for the peace, order and good government of Northern Ireland 'in respect of' precautions taken to secure the health of the inhabitants of Northern Ireland by protecting them from the dangers of an unregulated supply of milk. Though it may incidentally affect trade with *D* it is not passed in respect of trade and cannot be attacked on that ground So it does not offend the express limitations of S. 4 (7) of the Government of Ireland Act, 1920.

Per *Lord Atkin* — If, on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorized field The legislation must not, under the guise of dealing with one matter, in fact encroach [illegible] the forbidden field Even a lawful [illegible] achieved by invalid methods. (S [illegible] of Ireland Act, 1920, provides that [illegible] visions of this Act [illegible] the Parliament of Northern [illegible]

[illegible] tion....") GALLAGHER *v* LYNN (1937) A C 863= 106 L J (P C) 161=157 L T 374.

MALICIOUS [illegible]

probable cause— [illegible]

How far correct— [illegible]

H (plaintiff) t[illegible] conspiracy to defra[illegible] taining money from him by false pretences. On the information of *S* they were charged before the justices at *E*, committed for trial to the Central Criminal Court, tried there by the recorder and convicted. On appeal, the Court set aside the conviction, being of opinion in the case of *H* that there was not a sufficient case to go to a jury Plaintiff *H* was found to be innocent but the question was as to the effect on *S's* mind.

Held, that reasonable and probable cause is as defined by Hawkin[illegible] D. 167 at 171, [illegible] based upon a [illegible]

[illegible] is for the Judge. To ask the general question whether the defendant took reasonable care to inform himself of [illegible]

That question together with the question whether the facts so believed amount to reasonable cause for believing the accused to be guilty, are for the Judge. HERNI-

MINOR.

[illegible] MAN *v.* SMITH. (1938) A.C 305= 107 L J. (K.B.) 225.

MASTER AND SERVANT—*Accident to an employee in a mine—Duty of owner to provide a safe system of working in mine—Delegation of the duty to an agent—If master liable for accident caused thereafter*

The appellants owned a number of collieries. The respondent was an oncost worker at one of his collieries and while so employed met with an accident and sustained injuries in respect of which he claimed damages. On the date of the accident, he was employed underground on the work of repairing an airway leading off the Mine Jiggar Brae, one of the main haulage roads When he was proceeding, at the end of the day shift, between 1 30 and 2 P.M to the pit bottom by way of the Mine Jigger Brae the haulage plant was put in motion and before he could reach one of the manholes provided, he was caught by a rake of hutches and crushed between it and the side of the road The Board of Directors ap[illegible] on the mining [illegible] he agent in turn [illegible] ry, the appoint[illegible] of Directors. All the subordinate officials were selected and appointed by [illegible] managers [illegible] out the [illegible] Regula[illegible] stem of [illegible] that the [illegible] fect was known to the agent. S. 2, sub S. 4 of Coal Mines Act, 1911, provides that "the owner or agent of a mine [illegible]

[illegible] which they are excluded by statute, when they had delegated the duty to take care of the servants to competent subordinates and (2) that under the doctrine of common employment, company is not liable for the negligence of the agent who was a fellow employee.

Held, that the master, being primarily under a duty to take due care in the provision of a reasonably safe system of working, is not absolved from that duty by the appointment of a competent person to perform the duty As for the second ground the agent engaged in [illegible] g a safe system [illegible] a common em[illegible] the mine He [illegible] He is performing the [illegible] y of an employee. WIL[illegible] COMPANY LIMITED *v.* [illegible] (1938) A C. 57= [illegible] P.C.) 117=157 L.T. 406.

MINOR—*Hire purchase agreement of a motor lorry—Minor carrying on business as haulage contractor—* [illegible]

[illegible] hire-purchase, it was found by the County Court that the contract was not for the benefit of the minor and that therefore the contract was void.

MORTGAGE.

beneficial to the in

contract for the la...

hire-purchase terms was not a contract for the benefit of the minor, it was not binding on him. MERCANTILE UNION GUARANTEE CORPORATION, LIMITED *v.* BALL. (1937) 2 K B. 498=106 L J. (K.B.) 621=157 L T. 162.

MORTGAGE—*Law of Property Act, 1925—Mortgagee entering into possession—If can appoint a receiver to take possession.*

It is open to a mortgagee to exercise the power given to him under S 101, Sub-s. 1 (3) of the Law of Property Act, 1925 to appoint a receiver of the income of the mortgaged property or any part thereof, even after he has gone into possession of the properties. The words in which the power to appoint a receiver is expressed are

...

PANY, LIMITED *v.* PEARLBERG. (1938) 1 Ch. 687.

hammers, etc.—If it

of neighbour's comfo

only on complaint m

The defendant co

site land and buildi

...

interfere with her reasonable and comfortable enjoyment of her premises. Bennet, J., held, that by reason of these operations there was a substantial interference with plaintiff's reasonable enjoyment of her buildings and that it constituted an actionable nuisance, that the qualification with regard to the rule in regard to interference that in respect of operations of this character such as demolition and building, if they are reasonably carried on and all proper and reasonable steps are taken to ensure that no undue inconvenience caused to neighbours, *whether from noise, dust or other* reasons the neighbours must put up with it, applies only where the operations are operations that may be

OPEN SPACES ACT (1906), S. 10.

described as the usual and normal use of land by

...

note of and the plaintiff has no cause of action by the fact of the new machinery used; and if customers to the hotel should have stopped custom by this noise it is a necessary misfortune for which she can have no cause of action unless if the defendant has exceeded his limits but that in working the operations the defendants had exceeded their limits as in the matter of throwing dust, etc., they showed a reprehensible lack of regard for the duty which they owed to their neighbours. ANDREAE *v.* SELFRIDGE AND COMPANY, LIMITED.

(1938) 1 Ch. 1=107 L.J (Ch) 126=157 L T. 317

OFFICIAL SECRETS ACT (1911) S. 2, sub S. (1—*Police Officer—If a "person who holds office under His Majesty".*

The Official Secrets Act, 1911, S. 2, sub-S. (1) pro-

"If any person having in his possession or . . . . . information . . . which has been confidence to him by any person holding His Majesty . . . . (*a*) communicates the. . . . information to any person, other than a person to whom he is authorised to communicate it. . . . that person shall be guilty of a misdemeanour", and Official Secrets Act,

...

-aph almost identical with the police circular in the *D.D.* newspaper written by the appel-

-ne circular was only for police use and confiden-

-e respondent (superintendent of *S* police) the appellant and asked him to disclose the his informant under S. 6 of the Official Secrets

...olice ...was

...Wales, ...olice ..., city ...ithin ...con- ...that ...d his ...He is ...esty"

within the meaning of the Official Secrets Acts LEWIS *v.* CATTLE. (1938) 2 K B. 454=107 L J. (K B.) 429=159 L T. 166.

OPEN SPACES ACT (1906), S. 10—*Conveyance of land to Local Authority to be preserved as an open space—Laying out the land as sports ground—Erection of residence for caretaker—Action by Attorney General for an injunction restraining such erection—If maintainable.*

Relevant portion of S. 10 of the Open Spaces Act 1906, provides as follows:—"*A local authority who have* acquired any estate or interest in or control over any open space . . . . under this Act shall, subject to any

PERPETUITY.

conditions under which the estate, interest or control was so acquired—(a) hold and administer the open space . in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and
regulation and for no other pu
and keep the open space ..
and may inclose it or keep it
ings and gates, and may drain, level, lay out, turf plant, ornament, light, provide with seats, and otherwise improve it, and do all such other works and things and employ such officers and servants as may be requisite for the purposes aforesaid or any of them". In 1905, the Commissioners of Poole Harbour conveyed to the corporation of Poole a part of Sandbanks containing about 12 acres The conveyance was expressed to be made in consideration of certain covenants on the part of the corporation The land was expressed to be conveyed to the council to hold '
that the same may for ever b
used as an open space or as
ground for the public use"
ant that the corporation "w
subject as aforesaid preserve t
as an open space or as a plea
ground for the use of the public and will take all neces
sary steps to maintain the land as such".
tion proposed afterwards to erect a b
residence for a permanent caretaker of t
land.
intere
from t

Held
in respect of which the covenantees would be the proper persons to sue The corporation of Poole, when they accepted this conveyance became subject to the statutory

ATTORNEY-GENERAL *v.* POOLE CORPORATION (1938) 1 Ch. 23=106 L J. (Ch.) 319=157 L.T. 209

PERPETUITY— *Special power of appointment*—

common and after the death of either of them to pay the whole of the income thereof to the survivor of them during the residue of his or her life but so that my said grand-daughter shall not during 21 years from my death have power to anticipate the half or the whole (as the case may be) of the income payable to her under this present trust". Neither of the two grandchildren was alive at the date of the deed of 1891 which conferred the power

PRINCIPAL AND AGENT.

Held, the gift of the whole income to the survivor of them is void for perpetuity The interest is contingent and not vested. The original interest given to the two grandchildren is an interest to them as tenants in common. Upon the death of the first a new interest is
a contingent
reversionary
ly vest with-
r. *Whitby* v.
Von Luedecke, (1906) 1 Ch. 783, followed. *In re* LEGH'S SETTLEMENT TRUSTS, PUBLIC TRUSTEE *v.* LEGH. (1938) 1 Ch 39=137 L J. (Ch.) 6.

POWER OF APPOINTMENT—*Settlement—Power to appoint in favour of one—Prior attempt with trustees of settlement to secure a benefit for appointer—Failure of—Later exercise of power in favour of the object of the power—Motive to defeat the trustees—If exercise of power fraud on the power.*

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Held, the question of a fraud on a power of appointment where there is one object and one object only of the power, differs widely from the question of a fraud on
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ed to deliver particulars stating which of the statements in the words complained of the defendant relies on as statements of fact and which as expressions of opinion,

Owner, meaning of—Mercantile agent—Pledge of documents by agent to Bank—Bank surrendering the same to pledgor as trustees for sale—Pledger fraudulently pledging elsewhere—If Bank entitled to recover the documents.

The Lloyds Bank advanced money to S. & Co., Ltd. which carried on business in Bombay and London and received by way of security for such advances Bills of lading and invoices in respect of certain merchar

PRINCIPAL AND SURETY.

The Bank handed to S. & Co, in London

lading and invoices to enable S. & Co. to

chandise as trustees for the plaintiffs on the

letters executed by S. & Co. to the Bank

of the Bank surrendering documents like

in existence for over 6 years But S & Co

financial difficulties and unknown to the Bank pledged with the defendant Association those documents taken from the Lloyds Bank. The defendant neither knew nor had any reason to suspect S. & Co. in this matter. The Bank claimed the return of the documents and damages from the defendant.

Held, that S. & Co. were mere mercantile agents

ments were not handed back to S. Co., as owners

signed by both—Principal paying one instalment—Subsequent death of principal—Surety paying the balance—Claim to recover same from the principal's estate—Promissory note found to be unenforceable as contravening Money-lenders Act—Surety, if cannot recover money paid by him towards such a promissory note.

In October 1930 a testator *C* borrowed from *R*, Ltd.

amount due under it, got back the note

and then applied to recover against the

amount which he had paid. But it was

note did not satisfy the requirements

Money-lenders Act and was consequentl

either against *S* or against *C*. It was therefore contended that *S* could not recover against *C* the amount which he wrongly paid. Neither *S* nor *C* was aware of this defect in the note.

Held, that the general rule is that when a guarantor enters into an obligation of guarantee at the request of the principal debtor and makes the payments on default of the debtor, then there is an implied undertaking by the principal debtor to pay the guarantor

so paid. The request which is to be implied

pay if I do not" and not " Please pay whate

any, which I am liable to pay and which i

irrecoverable by the Money-lenders Act".

fore entitled to recover from *C's* estate the

(*S*) had paid. *Alexander* v. *Vane*, (1836)

511, followed. *In re* CHETWYND'S ESTAT

TRUST, LIMITED *v.* BROWN. (1938) 1 Ch. 13.

PROHIBITION—*Writ of—Quasi-judicial act of a corporate body—Declaration regarding a house that it is insanitary—Application of wrong test—Power to order demolition of house—Approval of independent authority being condition for the exercise of—Operation of writ after declaration—Corporate body if functus officio—House unfit for human habitation—Meaning of.*

The appellants are the owners of a house, and the respondents are a corporate body, constituted by the Signapore Improvement Ordinance, 1927, and entrusted

PUBLIC AUTHORITIES PORTN. ACT (1893), S 1

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...57 of the

...claration.

and the respondents heard objections to the declaration The respondents submitted to the Governor in-Council the declaration in accordance with the provisions of S 59 of the Ordinance. If the Governor in-Council approves the declaration, the respondents may require the owner to demolish the house. The appellants applied for a writ of prohibition on the ground that the ... *ultra vires* in making the decla

...spondents must be regarded as

... functions in deciding whether the declaration should be revoked or submitted to the Governor-in Council. (2) That the respondents were applying a wrong and an inadmissible test in making the declaration and deciding to submit it to the Governor-in-Council. They were therefore acting beyond their powers and the declaration is not enforceable and is *ultra vires*. The respondents gave the appellants no opportunity of applying for prohibition or *certiorari* before they sent the declaration to the Governor-in-Council. In requiring the demolition they would be carrying into effect the original declaration which indeed required the approval of an independent authority. There must remain something to which the prohibition can apply, some act which the respondents, if not prohibited may do in excess of their jurisdiction including any act which may be done by them in carrying into

LTD. *v.* SINGAPORE IMPROVEMENT TRUST.
(1937) A C. 898 = 106 L J. (P C) 152 = 157 L T. 358.

PUBLIC AUTHORITIES PROTECTION ACT (1893) S. 1—*Lunacy Act, S. 276—Visiting committee under—Appointment of medical officer by the committee—Dismissal of, with three months' notice—Power of visiting committee to dismiss without notice—Action for*

The plaintiff then was prosecuting his claim for a superannuation allowance This question was finally decided by the Minister of Health in November, 1930, against the plaintiff. In 1933 the plaintiff filed this suit against the visiting committee for wrongful dismissal and for return of his superannuation allowance.

Held, that the suit was barred by S. 1 of the Public Authorities Protection Act as inadequacy of notice complained of, and the neglect to pay the superannuation contributions were neglect of "an act done in pursuance, or execution. . . . . . , of any Act of Parlia-

PUBLIC HEALTH ACT (1875).

ment" and the suit was not brought within 6 months of either of those acts. S. 276, sub Cl. (1) of the Lunacy Act, 1860, provides that the "visiting committee of every Asylum shall appoint. . . . a medical officer . . ." and sub S. 3 provides that "the committee may remove any person appointed under this section" MCMANUS v. BOWES. (1938) 1 K B 98=157 L T. 385= 107 L J (K B) 51.

PUBLIC HEALTH ACT, (1875)—*Rivers Pollution Prevention Act, 1876—Natural stream—Later sewage water discharged into it—If status changed to a sewer.*

The plaintiffs are the owners of certain lands situated in the borough of Wenlock and they carried on brick and tile works at Blest Hill, Madeley. There was a water-course running through their property The water-course began as a natural stream and flowed through Madeley, passing by a culvert through part of the plaintiffs' property The culvert had been made by plaintiffs' predecessors in title and then this was a natural stream not vested in or repairable by the local authority For several years past about 20 houses in Madeley town discharged sewage into the water course and later there were 44 more houses discharging sewage likewise. The defendant is the corporation of Wenlock liable to repair all sewers veste l in them and to prevent sewers becoming a nuisance. The plaintiffs sued the defendants for a declaration that the water course was a sewer and that the defendants were liable to repair it

Held, that it is not in law possible to say that a

Rivers Pollution Prevention Act, 1876 Such discharge is illegal as offending the Rivers Pollution Act and cannot have the effect of changing the status of the channel LEGGE AND SON, LIMITED v WENLOCK CORPORATION. (1938) A C 204= 107 L J (Ch.) 72=158 L T 265.

REVENUE—*Estate duty — Testator bequeathing annuity to widow—Annuity paid out of general income—No fund set aside to meet the annuity—Death of the annuitant— Estate duty if payable — Estate Duty Ordinance, Hong Kong, No 3 of 1932, S 25 (1) and (2)—Taxing Statute of Dominion or Colony—Evolution of British statute and decision of British Courts—*

income of the estate as and when the annuity became due. The widow died subsequently and thereupon her annuity ceased The respondent claimed that upon the death of the widow estate duty be ame payable under

or interest in any property stood, during the lifetime of the widow, limited to or in trust for any person by way of succession Estate duty was paid in respect of the property passing under the will upon the death of the testator

Held, that there was property of the testator in which the widow had an interest ceasing at her death, and to

REVENUE.

passing by the will can properly be treated as an interest in the property within the meaning of S 25 (2). The phrase "any property, or any estate or interest in any property" coupled with the words 'stands limited' refers to definite property or an estate or interest in it, which actually exists and can be properly defined. The exemption given by S 25 (1) does not apply and estate duty is payable. In interpreting a taxing statute of a Dominion or a Colony which contains, on its face, no reference to its origin or to previous legislative history, it is not permissible to consider the evolution of any British statute or provision from which the terms or whole sections of the enactment under consideration may have been taken, or to rely on decisions as to the true interpretation in the courts of Great Britain of those terms or sections. (S. 25 of the Estate Duty Ordinance, 1932, runs thus "S. 25 (1) If estate duty has already been paid in respect of any settled property since the date of the settlement, upon the death of one of the parties to a marriage, no estate duty shall be payable on the death of the other party to the marriage unless such person was at the time of his or her death or had been at any time during the continuance of the settlement competent to dispose of such property (2) For the purposes of this section, the term settlement means any deed, will, agreement for a settlement or other instrument, or any number of instruments, whether made before or after or partly before and partly after the commencement of this Ordinance, under or by virtue of which instrument or instruments any property, or any estate or interest in any property, stands for the time being limited to or in trust for any persons by way of succession, and the term settled property means the property comprised in a settlement" ARMSTRONG v. ESTATE DUTY COMMISSIONER (1937) A C 885= 106 L J (P C) 133=157 L T. 376

——*Income tax—Company manufacturing sugar—Advances by Government—If trade receipts—Liability to income tax—British Sugar Industry (Assistance) Act 1931*

The Government made advances to a company carrying on the business of manufacturing sugar from beet root grown in Great Britain, under a statutory scheme embodied in the British Sugar Industry (Assistance) Act, 1931. In that year, the advances were intended to be used and could properly have been used to meet their

gains for the year in which they were received The amounts were assessable to income tax under case 1 of Sch D to the Income-tax Act 1918

Per *Lord Macmillan*—The word 'advances' is

v. SMART (1937) A C 697= 106 L J (K.B) 185=156 L T 215

——*Income tax—Guarantee to make up deficiency in the fixed dividend or pay the entire dividend to share holders of a company—Payment by guarantor contingent and variable—If 'annual' payments—Liability to tax—R 21 of the General Rules of the Income tax Act, 1918*

pany jointly and with the trustees that in case the

fixed dividend. In some of the years, the *D* company made no profits, in others the profits made were insufficient to pay the dividend in full. Assessments were made in respect of the sums paid by the appellants

all Schedules of the Income-tax Act, 1918." The fact that the payments were contingent and variable in amount does not affect the character of the payments as 'annual payments'. The appellants were properly assessed

Per *Lord Maugham*—In R. 21 the word 'annual' must be taken to have, like annuity, the quality of being of recurrence and in this cas necessary quality of recurr LIMITED *v.* INLAND REVENI (1937) A.C. 785=196 L.J. (K.B.) 138=157 L.T. 396.

ROAD TRAFFIC ACT (1934)—*Passenger vehicle—Meaning of—Ford V. 8 Utility car, if a passenger vehicle.*

A Ford V. 8 Utility car was constructed as follows.—The engine and chassis were similar to those used in the manufacture of Ford V. 8 passenger saloon motor cars

Act, 1934, ran as follows :—R. 3. "The driver of every foot passenger who is on the carriage way at such crossing, and every such foot passenger shall have precedence over all vehicular traffic at such crossing" While the plaintiff was crossing a road in a pedestrian crossing marked by Belisha beacons, he was struck dant's motor car. He was visible to the on- The defendant pleaded, contributory negli- e plaintiff in that he did not keep a proper look out to see that the defendant's motor car was approaching.

Held, that the Regulations are so framed as to make it impossible, when they apply, for the defence of contributory negligence to be raised. Regulation 3 says that unless the driver can see that there is no foot

such a case that the cause of the accident can be negligence of the plaintiff, because *ex hypothesi* the defendant, if he has done his duty, has already stopped. BAILEY *v.* GEDDES. (1938) 1 K.B. 156=107 L.J. (K.B.) 38.

SHIPPING—*Action in rem for damages against shipowners—Arrest of ship—Release of, on bail—Subsequent* *fendants—Charterers held to indemnity from ship- to have the bail given to*

laintiffs (owners of cargo)

were held respect of July the s given eet the

ty is a of the , 1925, to the (char- to the laim of the plaintiffs against the first defendant and the plain-

Court, if can order the solicitor to pay costs personally.

solicitors were guilty of certain acts of professional misconduct The solicitors contended that as from the date when they ceased to represent the defendants for whom they had acted, the judge ceased to have jurisdiction over them in respect of matters that happened before that date.

Held, that the jurisdiction of a judge of the High Court who hears a case to exercise control over the conduct of solicitors in the case, as officers of the Court, does not come to an end if they cease to be solicitors on the record before an application is made to him to exercise that jurisdiction *Simes* v *Gibbs*, (1838) 6 Dowl. P. C. 310, followed BRENDON *v* SPIRO (1938) 1 K B. 176 = 157 L T 265 = 107 L J. (K B) 481.

SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1895—*Desertion by husband—Claim by wife for maintenance—Defence justification—Adultery of wife—Statement by wife about the doubtful paternity of a child—If admissible in evidence*

The parties were married
three children of the marriage
tenance from the husband on
deserted her in 1937. The de
reasonable cause for leaving the wife in that she was guilty of adultery. As evidence he wanted to let in evidence of a statement by her that she told him that he would have to keep the last child whether his or not The wife was also found to have written an indecent letter and there were also indecent letters in her possession.

Held, the evidence of the admission of adultery was admissible in evidence It was not tendered to bastardize the child. When a husband comes to Court and

had reasonable cause to leave the
ROAST (1938) P.

TORT—*Damages—Injury as a r... Death of the injured person a few days after accident—Law Reforms (Miscellaneous Provisions) Act of 1934—Loss of expectation of life—Claim for—Cause of action if survives to personal representative.*

A girl of twe
motor-car collisi
the defendant
amputated Fo
the direct result
trator of the girl'
in two capacities
wife as dependa
1846 to 1908, (2) damages for the benefit of the estate

died (Greer, L J, dissenting).

Held (by the House of Lords), that the injured person is damnified by having cut short the period during which she had a normal expectation of enjoying life

representative. ROSE *v.* FORD. (1937) A C 826 = 106 L J. (K.B) 576 = 157 L T. 174.

——*Master and servant—Independent contractor—Employer sending one of his apprentices to work with the contractor—No request by contractor for loan of his services—Negligence of such apprentice—If contractor liable or the employer*

The defendants *L* Company were the owners of paper mills and in 1935 were erecting a new power house for the electrical equipment required for the mills. The electrical installations were entrusted to an indepedent contractor (another Company *E*) That company was short of men and therefore by an arrangement with *L* Company some men (including the plaintiff *C*) were borrowed from the *K* Company and as a result he (*C*) was now in the work of the *E* Company It was the custom of the defendants *L* Company, when electrical contractors were at work on the premises, to instruct their electrical apprentices to work with the other electricians and under that system *M* was working under
of *E* Company On the
a scaffolding for the
roved defective. That
defendants The plank
broke and plaintiff sustained injuries, whereupon the plaintiff filed this suit for damages.

Held, (*i*) that the defendant company was not liable as occupiers of the place where the platform was because they had left it to competent contractors to do that work In the course of doing that work, the contractors used some planks not supplied by the defendant for that purpose. The defendant did not control them in doing the work, (*ii*) but the defendant was liable for the tortious act of its servant *M* He is to be regarded as
was an apprentice of *L* and *L*
der *J* The *E* Company did not
he *L* Company was in fact using *J*
g out their duties of instructing
the servant of
the position in
he was not fit.
dicate, (1893) 1 Q.B 629 and *Bain* v *Central Vermont Ry Co* , (1921) 2 A C 412, distinguished CLELLAND *v.* EDWARD LLOYD, LIMITED (1938) 1 K B 272 = 157 L T 236 = 106 L J (K B) 626.

public park for
e pool—Piece of

ners and occu-
aintained a pool
the appearance
d loads of sand
of the pool A
child playing in the sand was injured rather severely by

"to rake the bottom of the pond with a rake" This rake would not go into the sand at the side of the pood but only on the top of the sand, so that if anything got embedded in the sand the rake would not disclose it but

SUM. JURIS. (MARRIED WOMEN) ACT (1895).

Before the trial of the action concluded, the solicitors engaged by the defendants first ceased to act for them and new solicitors were on record at the date of the judgment. The plaintiffs claimed costs of the action personally from the original solicitors on the grounds that the said solicitors while acting in the action as such solicitors were guilty of certain acts of professional misconduct. The solicitors contended that as from the date when they ceased to represent the defendants for whom they had acted, the judge ceased to have jurisdiction over them in respect of matters that happened before that date.

Held, that the jurisdiction of a judge of the High Court who hears a case to exercise control over the

P. C. 310, followed. BRENDON *v* SPIRO. (1938) 1 K B. 176 = 157 L T. 265 = 107 L J. (K B) 481

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been the father, it is hit by *Russell* v *Russell*, (1924) A. C. 687. It is admissible to prove that the husband had reasonable cause to leave the wife ROAST *v* ROAST (1938) P 8 = 157 L T 596 =

Loss of expectation of life—Claim for—Cause of action if survives to personal representative.

A girl of twenty-three was seriously injured in a

TORT.

and that the loss, damnum, is capable of being estimated in terms of money So a living person can claim damages for loss of expectation of life The cause of action was vested in the deceased before and when she died and by virtue of the Act of 1934, it survives for the benefit of her personal estate and passes to her personal representative. ROSE *v.* FORD. (1937) A C 826 = 106 L J. (K.B.) 576 = 157 L T 174.

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ontrol them in doing
was liable for the
is to be regarded as
rentice of *L* and *L*
E Company did not
ask *L* to send *M* The *L* Company was in fact using *J* as a means of carrying out their duties of instructing their apprentice *M* Therefore *M* was the servant of *L* and since they chose to put him in the position in
he was not fit,
adscale, (1893) 1
R) Co. (1921)
ND *v.* EDWARD
LLOYD, LIMITED (1938) 1 K B. 272 = 157 L.T. 236 = 106 L J (K B) 626.

——*Negligence—Paddling pool in a public park for*

TRADE ASSOCIATION

only anything that was lying on the surface of the sand. A few days before the accident to the plaintiff child, another child was injured in the pond close to the place where the plaintiff was injured.

Greaves-Lord, J.—Held, that the plaintiff was an invitee, that the presence of the glass was a hidden danger of which the defendants ought to have known, that the rake was useless to ascertain whether there was anything imbedded
Council did not exercise
they should have exerci
invited to the pond and

Held, on appeal, that
relationship between the
was that of invitor and invitee, and treating the case as

subjected when they paddled in the pool or by seeing that the children did not paddle in the pool at all, and that the rake that they provided was not sufficient to remove anything embedded in the sand. ELLIS *v.* FULHAM BOROUGH COUNCIL (1938) 1 K B 212= 157 L T. 380=107 L J (K B) 84

TRADE ASSOCIATION—*Poli y of price protection—Power to place a member's name on Stop List—Demand for payment as an alternative—Rule of illegal and ultra vires—Larceny Act, 1916, S. 29 (1)—Person writing letter demanding payment—Whether criminally liable.*

In pursuance
rules of a Trade
the Association sl
than the list pr
Association is em,
that the name of
above rules or any other person be
Stop List unless within twenty-one da
pays to the Association a fine to be fixed
The appellant, a member of the Associ
declaration that the rule is illegal and/or
necessarily contravening a provision of tl
contained in *S. 29 (1) of the Larceny Act, 1916* It was argued that the pronouncing of such an order would constitute a felony within the meaning of S 29 (1) of the Act.

Held, that, if the Association *bona fide* exercised the power with the *bona fide* intention only of carrying out the trade policy, they would not be demanding the payment without reasonable and probable cause. The writer of a letter demanding payment cannot be convicted under the provisions of the Larceny Act To put a man's name on a Stop List under the circumstances of the case is not a wrongful act. It is an act done in lawful furtherance of business interest and though done in combination is done without any express intent to injure the pe

Per Lord
lawfully, it c.
(S. 29 of the
thereof, any
ith menaces
any property
of felony."

[illegible]
(1937) A C. 797=106 L J.(K B) 495=157 L.T. 399

WILL.

TRADE MARK—*Registration of an invented word—The word also a geographical name which manufactures similar goods—If registrable.*

In connection with a preparation of a tonic, an extract of liver and iron, a trade mark "Livron" was registered. Livron was also the name of a town in France where the manufacture of chemical and medicinal preparation was carried on. The French company applied

under the
' is not an
(3) of the
S. 7 of the
me and the
only name of an existing place, and no Englishman
[illegible] any other name if he wished to refer to
ii) The word is according to its ordinary
geographical name within the meaning of
(iii) It cannot fall under cl (5) also
is no evidence of the distinctiveness of the
The mark is *ex hypothesi* the name of a place, and the name of a place where medicines of a similar character are manufactured and the business in medicines being of an international character, it cannot be held that the mark is distinctive *(iv)* Even if the matter comes within one of the 3 paragraphs, yet the Registrar on the original application would have had a discretion and on the
cise his
be exer-
Appeal
Trade
Marks Act, 1905, as amended by S. 7 of the Trade Marks Act, 1919, provides ;—" 9. A registrable trade mark must contain or consist of at least one of the

157 L T. 225=106 L.J (Ch) 352.

WILL—*Charity—Gift to corporation of armour and antiques to be kept in public hall for public inspection—Valid as educative—Gift of public hall for such public purposes as the corporation may consider desirable—Valid as a gift for the benefit of the inhabitants of the particular locality.*

By his will a testator after certain legacies, etc., gave his " collection of arms and antiques and articles de vertu to the corporation of *S* subject to the condition that the said corporation shall deposit the same in one of the rooms of the public hall hereinafter mentioned where the same shall be kept open to inspection by the public subject to such reasonable
by the
of his
upon
e same
and with and out of the monies thereby produced spend for certain purposes set out in the will and the rest to be held upon trust to apply the same in the purchase of a suitable site of land at *S* and in or towards the erection on such site of a public hall which site and hall when completed shall be presented by the executor

WILL.

to the corporation of *S* to be used by the said corporation for such public purposes as it may from time to time consider desirable Question arose whether the trust for erection of a public hall and the gift of arms, etc., was valid.

Held, first with regard to the gift of the public hall that the gift was a good valid charitable gift as the site and public hall were to become the property of the corporation of *S* and accordingly to be held, like its other corporate property for the benefit of the borough. The fact that the will says it is to be a public hall and used for "such public purposes as the corporation may from time to time consider desirable" does not render the gift invalid. The words 'public purposes' here are limited to public purposes for the benefit of the inhabi-

collection to be inspected by the public. This is an educational object and is therefore charitable *In re* SPENCE. BARCLAYS BANK, LIMITED *v* MAYOR, ETC OF STOCKTON ON TEES. (1938) 1 Ch 96 = 107 L J (Ch) 1.

——*Constructio .—absolute legacy—Modification to life estate by codicil—Death of legatee before testatrix—Effect—Legacy—Whether lapses.*

A testatrix by her will after bequeathing certain specific legacies directed that her trustees should stand possessed of the residue of her real and personal estate in trust for a certain sum to her married daughter *G*. By a codicil of later date the testatrix directed that her trustees should hold the legacy given to *G* upon trust to invest the same and to pay the income thereof to her during her life without power of anticipation and after her death to hold both the capital and income in trust for the persons who would on the death of her daughter be the testatrix's own statutory next of kin under the Administration of Estates Act, 1925, as if the testatrix had died possessed thereof intestate and without having been married *G* having predeceased the testatrix the question was raised whether the legacy bequeathed to her lapsed on her death.

Held, that the legacy was a settled legacy and the death of *G* the tenant for life did not cause a lapse In *re Pinhorne* (1894) 2 Ch 276 and *In re Powell*, (1900) 2 Ch. 525 relied on *In re* HARWARD. NEWTON *v.* BANKS. (1938) 1 Ch 632

——*Construction — Bequest to A for life—Superadded power to deal with property as if it were her own—If the power exercisable by will or only* inter

The testator died His sister A L predeceased him and the other sister C L died after having made a will and the question was raised if C. L. had an absolute power because if she has a general power of appointment over the property given to her by her brother's will, the will will operate as an exercise of that power

Held, that the power was not merely an administrative power but a beneficial power which gives the donee power to deal with the property in which the testator

WILL.

has given her a life interest as if it were her own. There was given in this will a power to the donee of disposing of the property both during her life and after her life by a testamentary power of appointment. *In re* LAWRY ANDREW *v.* COAD. (1938) 1 Ch. 318 = 107 L J. (Ch) 170 = 158 L T. 493.

——*Construction—Gift to compound class—Whether grandchildren take as joint tenants or tenants in common—Double words of severance when necessary.*

The rule stated in Jarman on Wills, p 7th Ed. 1772, that, where there is a gift to a compound class, for example to *A* for life and at his death to be divided amongst his children then living and the issue of children then dead the issue to take their parents' share, only the children take as tenants-in-common, and double

uired to enable the issue as
e as tenants-in-common and
apply where the gift is in a
is practically impossible to
rance, and in such a case the

words of division can be taken to apply to the original class of children as also to the substituted sharers, namely, the grandchildren *In re* FROY (DECEASED) FROY *v.* FROY. (1939) 1 Ch 566 = 158 L T 518

——*Construction—Legacies—Provision that certain legacies shall abate if estate insufficient for paying all—Estate found insufficient—Delay in paying legacies—Interest on legacies—If also to be taken from the abated legacies and paid to the benefiting legatees*

By his will a testator bequeathed a large number of pecuniary legacies Among them were two legacies to W N W and C. D. W two of his nephews The will contained a clause that in the event of the estate not being sufficient to pay all the funeral and testamentary expenses, etc., and legacies in full, then "in such case the pecuniary legacies hereinbefore given to my nephews, W. N. W and C. D W (they being otherwise provided for) shall abate equally ." The legacies were not paid within one year after the death of the testator The estate also proved insufficient for payment of all legacies Interest became payable on the other legacies under the law as the legacies were not paid within one year. The question arose whether interest should be added to the respective legacies entitled to the benefit of the direction as to abatement so as to be payable in priority to the pecuniary legacies subject to the burden of that direction

Held, that where the estate is sufficient to pay the whole of the legacies in full, and there is a residue, it may be unjust that the residuary legatees, who are entitled to nothing until all the legacies have been paid, should benefit by the delay in paying them which they would do if the interest which the money has been

107 L J (Ch) 1 4 = 158 L T 147

——*Construction—Will of 1930—Bequest of "all my possessions to b . divided equally amongst all my relations"—Testatrix a spinster—Ascertainment of beneficiaries—If whole estate disposed of—Administration of Estates Act, 1925*

A testatrix *B* a spinster, died in 1930 having executed a will a few days before. The will provided that she wished "Ethel and Hilda Harding to take possession

all my possessions to be held in trust after my death and divided equally amongst all my relations". The testatrix had no nearer relations than her sister's children, her sisters also having predeceased her. There were also

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class than would the words "my relations" and they would have been persons, other than a husband or wife, who would have been entitled to the personal estate of the deceased by virtue of the Statute of Distributions.

be infinite The result of the direction in the will that the relations should take equally is that the persons entitled under the statute having been ascertained, they would not have taken in the shares indicated by the statute, but would have taken equally. The 1925 Act has not made any change in this respect. Only the persons to take will be the persons under the Administration of Estates Act, 1925 and not under the Statute of Distributions. It does not take in all the relations recognised by the 1925 Act as potential beneficiaries *In re* BRIDGEN: CHAYTOR *v.* EDWIN.
(1938) 1 Ch 205 = 107 L J (Ch.) 124 = 158 L.T. 238.

WORKMEN'S COMPENSATION ACT (1925), S. 10 (ii)—C
and collector
During those
rent contracts of service—Accident in colliery employment—Basis of compensation.

A workman, a collier, in addition to his employment as a collier in the appellant's mine, acted as sub check-weighman at the colliery. He was also employed by his

trade union to collect subscriptions on Fridays from the members. He was allowed time off by his colliery employers when doing these two duties and for the time occupied in doing these two duties he was not paid by
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money, and the remuneration which he receives is paid out of funds belonging to the Union. The collier met with an accident in the course of his employment as collier and was totally incapacitated. He was given
ı his wages as collier alone
as checkweigher and union
he was entitled to them also
rkmen's Compensation Act, 1925, as earned in pursuance of concurrent contracts of service within the meaning of the section S. 10 provides that "For the purposes of the provisions of this Act relating to 'earnings' and average weekly earnings of a workman, the following rules shall be observed.... (*ii*) where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident."

head were earn-
service within the
ın's Compensation
Act and that the workman was entitled to have the other incomes also taken into account in fixing the compensation payable to him. UNSWORTH *v* PEASE AND PARTNERS, LIMITED **(1937) 2 K B 504 = 106 L J.(K B.) 868 = 157 L.T. 75**

SUPPLEMENT.

AGRA PRE-EMPTION ACT (XI OF 1922), S. 12—*Arazidari—Co sharer in the same* khewat—*If has the right of pre-emption.*

By S. 12 of the Agra Pre-emption Act a coparcener in a petty proprietary interest has the right of pre emp tion. Where a plaintiff is a co-sharer in the same *khewat* in which the arazidari in dispute is situated he has a right of pre-emption. (*Iqbal Ahmad, J.*) JAGDISH RAI v. SURAJ KUMAR SINGH.

1938 A.W.R. (H C.) 847.

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under S. 45 w
ADITYA NARA
TEWARI 1938 R D 911

1938 A.W R

——S. 45—Separate suit under—When *See* AGRA TENANCY ACT, SS. 44, 45 AND 1

——**S 79**—*Ejectment—Review procee tion with—Use of, as lever to obtain* takair *claim—Propriety—Revision*

In proceedings for review of order of ejectment, it is most improper for a Court to bring pressure on the ejected tenants to satisfy the *takair* claims against one of them, before proceeding with
own merits Where it had bee
collecting the *takair* due, it is such
that the Board should exercise its
set it right (*Darling, S M and Mehta, J M*) KHACHEROO v MOHAMMAD HASHIM.

1938 R D 918

——**S. 192**—Object of—When could be invoked. *See* AGRA TENANCY ACT, SS. 44, 45 AND 192.

1938 R.D 914

——**S 197 (b)**—*Grove—Transferability—No prohibition in wajib ul-arz—Countenancing of transfer by landlord on prior occasion—Effect of*

The Courts would not allow words to be introduced in the *wajib-ul-arz* which are not actually present. Where in the *wajib ul arz* of a village, the right to transfer grove rights is not specifically forbidden, and where further such a transfer has been countenanced by the landlord in the past, such rights could not be denied particularly after the passing of the Tenancy Act of 1926 Any custom which might have existed has been broken by the landlord countenancing such transfer (*Darling S.M and Mehta, J M*) MOHAMMAD UMAR v RAM PIARI. **1938 R D 916**

——**S. 252**—*Revision—Competency—Order under R 13 of O. 9, C. P. Code.*

No revision lies under S. 252 of the Agra Tenancy Act against a Commissioner's order under R 13 of O. 9, C P. Code, refusing to set aside an *ex parte* decree, as O. 43. R. 1 (*d*) clearly provides that an appeal would lie therefrom. *Mehta, J.*) JAI DEVI v CHAUDHRI RAGHUBIR NARAIN **1938 A W.R (B R) 388.**

ARBITRATION—*Arbitrator or referee—Statement of Counsel appointing referee—Latter empowered to examine parties—Character of referee,* ... *there-*

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is to

J.) RAMESHWAR
W R (H C) 807
n of draft of
—material fact.

, Ss.
rent
...ea of ownership in some one else also—Maintainability.

Under the Bengal Irrigation Act, no one else than a registered owner who has been awarded by the canal department the right to realise rent can sue for *rent for*
an owner brings a
t the rent was due to
Mohammad Noor, J.)
RITA RAI

19 Pat L T 897.

BENGAL LAND REVENUE SALES ACT (XI OF 1859), S 36—*Object of—Revenue sale during pendency of suit by mortgagee of the property—Purchase,* benami *for mortgagor—Suit by mortgagee after decree to declare sale fraudulent, if barred by S. 36*

The object of S 36 of the Bengal Land Revenue Sales Act is to discourage *benami* purchases at sales and with that in view the Legislature has said that a suit to oust the *benamidar* shall not lie What the Legislature intends to prohibit appears to be this that a purchaser having elected to make his purchase in a *benami* name, he could not thereafter come into Court to have the *benami* character of the transaction established and the *benamidar* ousted by Court The section is not to be construed so as to enable the sham title of a *benamidar* to be set up against a creditor of the real owner. Where during the pendency of a mortgage suit, the estate was sold for default in the payment of the land revenue by the mortgagor proprietor under the Bengal Land Revenue Sales Act, and it is purchased in auction in name of a third person *benami* for the mortgagor

where after the passing of a preliminary decree in the mortgage suit, the purchaser obtains possession, it is open to the mortgagee decree holder to institute a suit to declare that the revenue sale was fraudulent and void and inoperative as against his mortgage lien and S. 36 of the Act could not be pleaded in bar of such a suit, for that section has no application at all to such a case. (*Dhavle and Rowland, JJ.*) CHATRADHARI LAL *v.* BHAGWATI PRASHAD. 178 I C. 357=5 B R 91.

BENGAL MUNICIPAL ACT (XV OF 1932), S. 295—*Maintenance of meter in good condition—Duty of Municipality.*

Under S. 295 of the Bengal Municipal Act, the duty of maintaining the meter in good order rests upon the Municipality and not on the owner or occupier of the house. It is true that under rules framed by Government which were adopted as bye laws by the Municipality, the entire costs of house connection including the expenses of a meter had to be borne by the owner or occupier of the house, but there is no rule or bye law that the costs of maintaining the meter in good order have to be met by the house-owner and not by the Municipality. (*B. K. Mukherjea, J.*) SARAT CHANDRA GUHA *v.* KALIPADA RAY. 68 C L J 463

——**S. 309 (d)**—*Non repair of meter—Power of Commissioner to cut off water.*

S. 309, Cl (*d*) of the Bengal Municipal Act, does not empower the Commissioner to cut off water supply on the ground of any defect in or non-repair of the meter. (*B. K. Mukherjea, J*) SARAT CHANDRA GUHA *v.* KALIPADA RAY. 68 C.L J 463.

BENGAL TENANCY ACT (V

S. 26 F (4 (a)—*Co sharer landlord*

Tenancy Act, is competent to apply under sub S (4) (*a*) to join as a co applicant in the application under S. 26 F (1). In such cases, the applicant will not be bound by the special rule of limitation prescribed in S 26-F (4) (*a*), but may make his application within a reasonable time of his knowledge of the sale of the occupancy holding. (*Biswas, J.*) BENI MADHAB *v.* TAHERANNESSA. 43 C.W.N. 110.

——**S. 30 (a)**—*"Prevailing rate"—Meaning of.*

The "prevailing rate' referred to in S. 30 (*a*) of the Bengal Tenancy Act is to be determined as a question of fact, and not to be deduced inferentially from the actual rates which may be found to be in force in the locality concerned In many instances, the prevailing rate will no doubt be one single rate but not necessarily so. The

limits within which it varies may be ascertained. As to what the limits of variation should be, will depend not merely on the extent of the actual variations, but also on the number of cases which show such variations or the extent of the areas which may be involved. In areas to which S. 31-A of the Act is not extended, it is a fair rule to adopt, in order to ascertain the prevailing rate to consider whether or not it is the rate, or substantially the rate, paid by the majority of the raiyats in the locality. (*Biswas, J.*) DHIRENDRA NATH *v* GOLEJANNESSA. 43 C.W.N. 93.

——**Ss. 173 (3) and 174**—*Order setting aside sale under both provisions—Appealability.*

Where an application by a judgment-debtor in a rent decree to set aside a sale held in execution of that decree under S. 174 of the Bengal Tenancy Act and also on the ground that the purchase was barred under S. 173 (3), is allowed under the provisions of both, the order allowing the application is open to an appeal by one who was a party to the rent suit and to the application. (*Edgley, J.*) ADAM ALY KHAN *v.* JAGADISH CHANDRA. 43 C.W N. 108.

——**S. 174 (5)**—*Deposit under—When to be made—Power of Court to extend time.*

S. 174 (5) of the Bengal Tenancy Act contemplates that the amount recoverable in execution of the decree must be deposited with the appellate Court immediately after the presentation of the appeal to the Court in question and before its registration. The deposit is a condition precedent or at any rate a contemporaneous act in connection with the admission of the appeal The Court has no authority to extend the time within which the deposit might be made. (*Edgley J.*) SUDHIR CHANDRA *v.* NAZIR MAMUD. 43 C.W N 106=68 C L J 402.

BERAR LAND REVENUE CODE (1896), Ss. 38 and 178—*Nature of rules contemplated by S. 38—If comes into operation by itself—Basis of their validity—Publication in gazette, if only directory*

General rules' contemplated in S. 38 of the Berar Land Revenue Code are not rules of procedure but rules to guide the Revenue Officers in the disposal of Govern-

tion is a condition subsequent to the making of the rules and hence directory. The non-observance of that condition would not prevent the rules from taking effect. (*Gruer and Niyogi, JJ*) MADHAO GOPAL *v.* SECRETARY OF STATE. 1938 N.L.J. 439.

——**S. 41 (3)**—*Right of suit in Civil Court—Adverse decision by Revenue Officer on Government's right to enhance assessment.*

Where a person questions the right of Government to enhance the assessment on his land, but the Revenue Officer decides it adversely to him, he is clearly entitled to sue for establishing his right under sub S (3) of S. 41 of the Berar Land Revenue Code. (*Gruer and Niyogi, JJ.*) MADHAO GOPAL *v.* SECRETARY OF STATE 1938 N L J. 439.

S. 11 of the Bihar Money Lenders Act has to be construed as not intended to affect a decree already passed, a Court cannot therefore go behind a preliminary decree already passed by it in a mortgage suit long before the Act. The Court cannot therefore refuse to pass a final decree for sale in accordance with the preliminary decree on the ground that S. 11 of the Act came into force before the application for final decree was made. (*Rowland and Manohar Lall, JJ.*) MUHAMMAD YUNUS *v.* CHAMPAMANI BIBI 1938 P.W N. 885=19 Pat L.T. 875.

——S. 11 Scope ... Ultra vires ...

to existing Indian law is void under S. 107 (1) of the Government of India Act, 1935.

Wort, J.—S. 11 of the Bihar Money Lenders Act, whether it be described as a mere rule of limitation or as a provision of substantive law most certainly deprives the Court of the disc

under S. 3 of the Usurious

in which the circumstances p

of a discretion, and is most

express provision of law laid

Repeal Act of 1855 in those cases to which the Usurious Loans Act does not apply. S. 11 of the Bihar Money-Lenders Act is therefore repugnant to the earlier existing Indian law and to the extent of the repugnancy is void under S. 107 (1) of the Government of India Act of 1935.

Dhavle, J.—S. 11 of the Bihar Money Lenders Act has not been competently enacted so as to supersede S. 2 of the Usury Laws Repeal Act and must be treated as void.

J.) SADANAND JHA *v.* AMAN KHAN
1938 P W N. 913 (F B)

BOMBAY HEREDITARY OFFICES ACT (III OF 1874), S 36—*Scope—Principle underlying—Rule of lineal primogeniture—Applicability before* 1910—*Effect of amending Act III of* 1910.

The real intention of S 36 of the Bombay Hereditary Offices Act, as it stood before the amendment of 1910 that the nearest heir of a deceased watandar was to be determined according to the rule of lineal primogeniture. That was what the original S. 36 contemplated, and the amending Act of 1910 merely made explicit the real intention of the section. The amendment of 1910 did not introduce the principle of lineal primogeniture for the first time (*Wadia, J*) BASANGOWDA *v* FAKIRGOWDA. **40 Bom L R 1288**

——**S 36 proviso (3)**—*Suit to declare plaintiff's right as ne*

defendant—

representati

Absence of ,

—Limitation—Limitation Act, Arts 14 *and* 120

successor to the watan." The suit is really one for a declaration and is governed by Art 120 of the Limitation Act. (*Wadia, J.*) BASANGOWDA *v* FAKIRGOWDA. **40 Bom L R 1288.**

——**S 58**—Officiating kulkarni—Status of—Public servant. *See* CR. P. CODE, S. 197.
40 Bom.L R. 1286.

BUDDHIST LAW (Burmese,—*Ecclesiastical law*—

(Braund, J.) U THITA *v.* U ARESEINNA.
1938 Rang L.R. 678

——**(Burmese)**—*Ecclesiastical law — Puggalika owner—Right to appoint successor.*

According to the Burmese Buddhist ecclesiastical law

dike on his death vests in the *Sangha* at large. (*Braund, J.*) U THITA *v* U ARESEINNA.
1938 Rang L R 678.

CALCUTTA MUNICIPAL ACT (III OF 1923), S. 363—*Erection of portion of building without sanction—Order of demolition by Magistrate—Power of latter to enquire into propriety of withholding sanction.*

The erection of a portion of a building without obtaining the written permission of the Corporation is unlawful and the Corporation can under S. 363 of the Calcutta

Magistrate

ion. The

power to

y withheld

v. CHIEF

ALCUTTA.
68 C L J. 476 = 43 C W N. 186.

——**S. 363**—*Reconstruction of building without sanction—Power of Magistrate to order demolition*

The mere fact that there has been reconstruction of a building without sanction does not give the Magistrate a right to order demolition under S. 363 of the Calcutta Municipal Act, unless there has been erection of a new building or alteration of or addition to the existing building within the meaning of the Act (*Derbyshire, C.J and Bartley, J*) SHAIK BADLI MEAH *v* CORPORATION OF CALCUTTA **68 C.L J 478.**

CENTRAL PROVINCES COURTS ACT I OF 1917, Ss 14 and 26—*District Judge and Additional District Judge—Distinction—Appeal presented to latter, when presentation should be to the former, if in order*

S 14 of the Central Provinces Courts Act only

Courts,

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Judge

e others

are called Additional District Judges S. 26 of the Act makes a distinction between the District Court and

when an appeal is presented to an Additional Judge, when it ought to have been presented to the District Judge it could not be said to have been presented to an improper Court (*Niyogi, J*) GHULABCHAND *v.* KISHANLAL **1938 N L J 454.**

CENTRAL PROVINCES DEBT CONCILIATION ACT (II OF 1933) S 13 and Berar Land Revenue Code (1928), S 164 (c)—*Sale under S. 13 of the*

C. P. DEBT CONCILIATION ACT (1933), S. 21.

former Act read with S. 164 (c) of Berar Land Revenue Code—Creditor or his agent, if prohibited from bidding.

Where a sale is held unde [illegible] ciliation Act read with Cl (c, [illegible] Land Revenue Code, there i [illegible] provisions which restricts in [illegible] agent from bidding for and p [illegible] for sale. (*Greenfield, F.C.*) SITARAM *v.* RAMRAO. 1938 N.L.J. 473.

——S. 21—*'In respect of any debt'—A sale having for its origin the conciliation of a debt—Suit in respect of, if can be stayed.*

Simply because the transaction of sale in suit had its origin in the settlement of a [illegible] not become one "in respect of th [illegible] stayed under S. 21 of the C. [illegible] suit for a declaration and pos [illegible] under a sale by a mortgagor in satisfaction of the debt due, is not such a suit that could be stayed under S. 21. When the mortgagor subsequently applies for conciliation of his suit and shows the vendee as a creditor therein. (*Gruer, J.*) HIRAMAN *v.* LAXMAN 1938 N.L.J. 475.

——S. 21, Proviso—*Nature of agreement referred to—Conciliation of debt by transfer of land—If contemplated by the Act.*

It is only an agreement as contemplated by S. 12 of the C.P. Debt Conciliation Act, that is referred to in the proviso to S. 21 of the Act. Neither is a conciliation of debt by transfer of land contemplated by the Act, nor does any agreement of such a nature that may be arranged by the Board come within its purview. (*A. L. Binney, F. C.*) DAJIBA JAGANNATH JOSHI *v.* NARAYAN GOVINDRA SHAHADANI. 1938 N.L.J. 472.

CENTRAL PROVINCES LAND REVENUE ACT (II OF 1917), S. 40—*Rejection of application for review—If appealable*

An appellate Cou [illegible] appeal against an [illegible] review. (*A. L. Binn* [illegible]) JOSHI *v.* NARAYAN GOVINDRA SHAHADANI. 1938 N.L.J. 472.

——S. 220—*Jurisdiction of Civil Court—Decision of Revenue Court as to the basis of a partition*

Where a Revenue Court decides the dispute between parties as to the basis of a partition to be made, it is not for the Civil Court to say whether in so doing the Revenue Court has acted *ultra vires* or not. But whether the decision of the Revenue Court is *intra vires* or *ultra vires* the Civil Court's jurisdiction has not been barred under S. 220 of the C.P. Land Revenue Act for the purpose of declaring the titles of the parties (*Stone, C. J. and Clarke, J.*) LAKHANDAR *v.* HARLALPURI. 1938 N L J 463.

CENTRAL PROVINCES TENANCY ACT (I OF 1920), Ss. 12 and 13—Plea of transfer being in violation of S 12—Onus. *See* EVIDENCE ACT, SS. 101 AND 102. 1938 N.L.J 474

CHOTA NAGPUR TENANCY ACT (VI OF 1908), S. 21 (b)—*Construction—'Irrespective'—Meaning of.*

The word 'irrespective' in Cl. (*b*) of S. 21 of the Chota Nagpur Tenancy Act, cannot be held to mean 'subject to.' (*Wort, Ag. C. J. and Manohar Lall J*) RAMJAP DUBE *v.* JAGADISH CHANDRA DEO DHABAL. 178 I.C. 274 = 5 B.R. 78.

——S. 22—Breach of—Finding that land had been rendered unfit for tenancy—Interference in second appeal. *See* C.P. CODE, S. 100—FINDING OF FACT—FINALITY. 178 I.C. 274.

C. P. CODE (1908), S. 2.

CIVIL PROCEDURE CODE (V OF 1908), S. 2 (2)—*'Decree'—Rejection of insufficiently stamped memo-* [illegible]

19 Pat.L.T. 885 = 178 I.C. 150 = 5 B.R. 59.

——S. 2 (11)—*Legal representative—Claim as—Position as regards a rival claimant.*

Where a person, not in possession of the property of a deceased person, claims it as the legal representative of that person, the fact that a rival claimant has not taken possession of the property, cannot assist him to claim [illegible] His duty is to take possession [illegible]) JADUNATH MITRA *v.* ISAR 178 I.C. 198 = 5 B.R. 65.

——S. 11—*Compromise in prior suit—Agreement to pay rent—Subsequent suit for arrears of rent—Right to payment of rent, if can be denied.*

Where in a previous suit for arrears of rent, a compromise is entered into, by which the tenant agreed to pay the plaintiff a certain annual rent, and it had been acted upon, it is not open to the tenant in a subsequent suit for arrears of rent to plead that the plaintiff is not his landlord to whom the rent is payable. (*Darling, S. M. and Mehta, J. M.*) ALLAHDIA *v.* MANI RAM. 1938 R D. 917

——S. 48—*Applicability—Decree not capable of execution until the happening of a contingency—Execution—Starting point of limitation.*

S. 48, C. P. Code, deals with decrees and the execution thereof and obviously must relate to a decree which is capable of execution. In the case of a decree which is not executable except on the happening of a particular contingency, the time under S. 48 C. P. Code, will not begin to run until that contingency occurs. (*Broomfield* [illegible] *JJ.*) RANGO RAMA CHARYA *v* GOPAL [illegible] 40 Bom.L.R. 1278.

——Scope—If controlled by S. 15, Limitation Act. *See* LIMITATION ACT, S. 15 40 Bom.L.R. 1278.

——S. 64—Scope—Order allowing claim to attached property—Transfer by successful claimant before suit to set aside claim order—If void. *See* C. P. CODE, O. 21, R. 63. 17 Pat. 588.

——S. 100—*Finding of fact—Finality—Finding that land had been rendered unfit for tenancy.*

Where a tenant builds cooly huts on the land and the lower Court comes to the conclusion that by reason of such construction the land has been rendered unfit for the purpose of tenancy and that there has been a breach of S. 22 of Chota Nagpur Tenancy Act, the finding is one with which the High Court is not entitled in second appeal to interfere. (*Wort, Ag. C. J. and Manohar Lall, J*) RAMJAP DUBE *v.* JAGADISH CHANDRA DEO DHABAL. 178 I C. 274 = 5 B.R. 78.

——S. 100—*Question of law—Burden of proof.*

Where a Court considers the case and the evidence of one side only and disbelieving the evidence dismisses the claim on the ground that the assertions made have not been proved, the case is being solely decided on the question of onus and no amount of lip service to a rule which is ignored in the letter and in the spirit will serve to turn what is then a question of law into one of fact. (*Bose, J.*) UDHEBAN *v.* VITHOBA. 1938 N L J. 459

——S. 110—*Leave to appeal—Affirming judgment on merits—Judges of High Court differing on question of academic interest—If a good ground.*

C. P. CODE (1908), S. 115.

Where both the Judges of the High Court agree on the merits with the judgment of the Court below, but differ as between themselves on a question of mere academic interest, leave should not on that ground be granted to appeal to His Majesty in Council. (*Wort, Ag. C. J. and Manohar Lall, J.*) JOGENDRA NARAIN SINGH *v.* RADHA PRASAD SINGH

——S. 115—

petition—Power c... right of suit under O. 21, R. 63. *See* C. P. CODE, O. 21, RR 58, 60 AND 63 AND S 115.

1938 A.L.J. 1118

——S. 144—*Sale in execution of* ex parte *decree—Judgment debtor setting it a side by deposit under O* 21, *R.* 89—Ex parte *decree also afterwards set aside—Judgment-debtor's right to refund of compensation deposited for auction purchaser.*

If a judgment debtor against whom an *ex parte* decree was passed chooses to set aside the sale held in execution of that decree by making the necessary deposit under O. 21, R.
decree a
be entit
had dep
Such a c
with the
is made
which th...
entitled to a refund of such compensation money as a benefit by way of restitution within the meaning of S 144, C. P. Code (*Edgley, J.*) GORAKHYNATH *v* NARAYAN CHANDRA. 43 C.W.N. 104.

——S. 144—*Scope—Money due under decree—Payment to vakil of party—Subsequent reversal of decree—Application for restitution against party—Maintainability—Payment to vakil not certified to Court—If bar to restitution.*

Where money due to a party under a decree is paid to ...

whose vakil the money was paid S 144 of the C. P. Code is sufficiently wide to cover such a case. The fact that payment to the vakil is not certified to the Court will not defeat the application for restitution (*Burn and Stodart, JJ*) HANUMANTHAPPA *v.* GOOLAPPA.

48 L.W. 945

——O 1, R. 1—*Same transaction—Relief in respect of, claimed by defendant against co-defendant—Such defendant*

Where
co-defenda
with refere
added as a
a common ...
Ag. C J and Manohar Lall, J.) NILURIPATRA COAL CO. LTD *v* NORTH BURRAKKAR COAL CO., LTD. 178 I C 286=5 B R. 79

——O. 7, R. 11 (c)—*Rejection of plaint—Duty of Court—Insufficiently stamped memorandum of appeal—Granting of time to make up deficit—Considerations.*

Before rejecting a plaint under O. 7, R. 11 (*c*), it is the duty of the Court to require the plaintiff to make good the deficiency in stamp within a time to be fixed. Where

...

appellant to comply with the requirements of law, the

C. P. CODE (1908), O. 21, R. 58

memorandum of appeal may be received and time granted to make up the deficiency that may be found to be due. (*Dhavle and Agarwala, JJ.*) BAHURIA RAM SAWARI KUER *v.* DULHIN MOTIRAJ KUER

178 I C. 150=5 B R. 59=19 Pat L T. 885.

——O 9, Rr. 2 and 4—*Power of Court—Date not fixed for appearance of defendant—Order requiring ... f plaint—Non-*

... plaintiff to file process fees or copies of the plaint before fixing a date for the appearance of the defendant. Such an order is illegal and failure to comply with it does not entail dismissal of the suit. A dismissal of the suit for failure to comply with such an order is without jurisdiction. (*James, J.*) SRIPATI SARAN PRASAD SINGH *v.* INDARJIT MAHTON. 19 Pat.L.T. 854.

——O. 21, R 2—*Uncertified payment—Double payment to avoid execution—Suit for damages—Maintainability.*

Where a decree holder executes his decree, notwith-

...

to set aside a decree or pays to recover any money paid thereunder; all that he wants is to recover damages for loss incurred by the payment twice over in respect of the same liability. (*Manohar Lall, J.*) RAM DAS SAHU *v.* SUKHDEO RAM. 178 I C 196=5 B R. 71.

——O 21, R. 16, second proviso—*Transfer of decree to Legal representative of Judgment Debtor—Execution against other judgment debtor's—Right of transferee.*

The legal representative of a judgment debtor does

...

as the transferee of the decree is entitled to execute the decree against the other judgment debtors (*Dunkley, J*) MA HLA YON *v.* MAUNG TUN YIN

1938 Rang.L.R 699.

——O 21, Rr. 58, 60 and 63 and S. 115—*Objection under O 21, R 58—Duty of Court dealing with—If can go into question of title—Breach of R 60, if a*

...

whether the judgment ... property on his own behalf or on account of or in trust for some other person If the property is found to be in possession of somebody else, then it has to be decided whether it is in trust or on behalf of the judgment debtor. The question of title to the property, is not the Court's concern, nor is it competent to consider and decide it The order of the Court must be based entirely upon the finding on the question of possession As the provisions of R 60 are clearly mandatory and any breach

...

applicant under O. 21, R 63. (*Mulla, J.*

C. P. CODE (1908), O. 21. R. 63.

LAL v. RAM DIN. 1938 A.L.J. 1118 = 1938 A.W.R. (H.C.) 816.

———O. 21, R. 63—*Suit under—If one in continuation of claim proceedings—Order allowing claim—Subsequent transferee from claimant—If alienee* pendente lite—*Transfer if void under S. 64—Joinder of transferee as party to suit after one year—Effect—Suit—If barred.*

A suit brought under O. 21, R. 63, C. P. Code, to set aside an order allowing a claim to attached property is a mere continuation of the proceedings in the claim petition. A purchaser of the attached property from the suit

transferee is not a necessary party. If the transfer is not also a real one, the transferee would then too be not a necessary party to the suit. S. 22 (1) of the Limitation Act has no application to the addition of such a party after the period of limitation for the suit. (*Fazl Ali and Agarwala, JJ.*) MT. BAS KUER v. GAYA MUNICIPALITY. 17 Pat. 588.

———O. 21, R. 63—*Suit by unsuccessful decree holder—Frame of—If to be in representative capacity on behalf of all creditors—T. P. Act, S. 53.*

capacity on behalf of all the creditors of the judgment-debtor. S. 53, T. P. Act does not apply to such a suit under O. 21, R. 63. (*Fazl Ali* and *Agarwala, JJ.*) MT. BAS KUER v. GAYA MUNICIPALITY. 17 Pat. 588.

———O. 21, R. 92—*Fraud in conduct of sale—Suit to set aside sale—Maintainability.*

A suit to
irregularity
the sale is
P. Code.
under O. 2
SATISH CHANDRA [illegible] DAR. 68 C.L.J. 431.

———O. 22, R. 3 (1)—*Right to apply under—If confined to heirs of deceased plaintiff—Person claiming to be legal representative or claiming interest in continuance*

[illegible] SUBBARAYA[illegible] CHETTIAR 48 L.W. 932.

C. P. Code, is that it not merely declares the right of the Government to recover the court-fees but also authorises

C. P. CODE (1908), O. 41. R. 1.

the Court to make an order as to the party or parties from whom the court fees are to be recovered. It follows, therefore, that after the suit is disposed of, the Court is at liberty, whether the Government is represented or not before it at the time, to make an order in favour of Government for payment of court-fees; and in making such an order, the Court will no doubt be entitled in the exercise of its discretion to direct which of the parties shall be liable for the payment of such court-fees. If no such order is incorporated in the decree of the Court, Government can seek to obtain such an order by an application made under R. 12. (*Biswas and Edgley, JJ.*) GOVERNMENT OF BENGAL v. T. &

The general rule is that all persons having the equity of redemption ought to be brought on the record of a suit on the mortgage, the failure to bring any one of them on the record does not, however, necessitate the dismissal of the suit if the Court in his absence can deal with the matters in controversy so far as regards the rights and interests of the parties actually before it. The decree in the suit would not affect the interests of the parties not before the Court. But that does not mean that the Court can only pass a decree for something less
The Court can
amount without
e of the parties.
[illegible]HAMMAD YUNUS
[illegible]38 P.W.N. 885 = 19 Pat.L.T. 875.

———O. 40, R. 1—*Mortgage, simple—Suit to enforce—Receiver—Power of Court to appoint—Interest, rates and taxes in arrears—If sufficient ground for appointment of receiver.*

The Court in a suit on a simple mortgage has juris-

equitable to appoint a receiver. (*Beaumont, C.J. and Sen, J.*) DAMODAR v. RADHABAI. 40 Bom.L.R. 1256.

———O. 41, R. 1 (2)—*Construction—"Whom any party to the suit has not a present right so to remove"—*

All that an appellate Court is required to do under
[illegible]at it should peruse
a pauper and the
It cannot be held
[illegible]guments in support
in forma pauperis,
for to hold so would be to add something to the law on the subject and not to interpret it. (*Zia ul-Hasan and*

COMPANY,

Yorke, JJ.) RAM LAL *v.* KALI CHARAN.
1938 O.W.N. 1246.

COMPANY—*Winding up—Surplus assets—Preference share-holders—Rights of—Arrears of preferential dividends—Payment of.*

It was provided by the Memorandum of Association of a company that the preference shares should rank both as regards dividend and capital in priority to the ordinary shares. The articles of association provided

also a further provision that if the company should be wound up, the surplus assets should be applied in the first place, in repaying to the holders of preference shares the amount paid up thereon, and the residue should belong to the holders of ordinary shares. The

of preferential dividends could not be treated as "debts" and therefore to be paid out of the assets of the company before the "surplus assets" were ascertained. (*Lort Williams, J*) NEW RING MILLS CO., LTD. (IN LIQUIDATION), *In re* I L R. (1938) 2 Cal 533.

COMPROMISE—*Construction—Conflicting claims to property of deceased Hindu—Claim by brother by survivorship—Claim by daughters as heirs—Compromise—Division of properties—Allotment of shares to brother and daughters—Latters to take jointly and enjoy as of right—Estate taken—Limited estate or absolute estate.*

V and *B* were brothers, members of a Hindu family *B* died leaving two daughters *V* filed a suit against these two alleging that he and *B* were undivided that he was entitled to all the properties by survivorship and that the deceased's daughters were obstructing him in the enjoyment of the properties The defendants claimed to succeed as heirs of their father to his share of the property, but before any written statement was put in, there was a compromise By that compromise which was drafted as a partition, the properties were divided between the plaintiff on the one hand and the defendants jointly on the other. The daughters were to have a share in a family house jointly and to get a share of the

estate of a daughter under the Hindu Law and not an absolute estate (*Wadsworth, J*) NAGABHUSHANAM *v.* ANANDAYYA 48 L.W 939.

CONTRACT ACT (IX OF 1872), S 11—*Contract with minor to marry—Breach—Suit by him for damages—Maintainability*

A minor is not compete

binding contract to marry

misor is a major. The prot

is no better than an unaccepted proposal The minor cannot therefore, sue the promisor for damages for

COURT FEES ACT (1870), S. 8.

breach of promise to marry. (*Mya Bu, J.*) MA PWA KYWE *v.* MAUNG HMAT OVI.
1938 Rang L R. 667.

——S 37—*Scope—If mandatory—Decree on terms other than those contained in contract between parties—Power to make.*

Wort, J.—It is clear that there is no obligation laid down by the legislature in S. 37 of the Contract Act to make a decree in terms of the contract and on

1938 P W N. 913 (F B.).

——S. 51—*Party to agreement not carrying out his part—Right to complain of breach of agreement by other party.*

A party to an agreement who has refused to be bound

out his part of it cannot be

other party has committed a

because he has not performed

allowed. If he performs his

performance of the promise

atter is entitled to reasonable

his promise (*Robert, C.J. and Dunkley, J*) A K A. C. T. A. L CHETTYAR *v.* A K R. M. M K FIRM. 1938 Rang L R. 660.

——S. 63—*Remission of promise—Consideration, if necessary—Third party's right to take advantage.*

A dispensation or a remission by a promisee of the performance of the whole or any part of a promise made to him does not require to be supported by consideration and there need not be a proposal of the dispensation or remission which is accepted. Hence a promisor is entitled to take advantage of the remission by the promisee of part performance of the promise, although he is not a party to the agreement in which the remission is embodied. (*Roberts, C J and Dunkley, J.*) A K A. C T. A L CHETTYAR *v.* A. K. R M. M K. FIRM 1938 Rang L R. 660.

CO-SHARER—*Remedy against another co-sharer—Ejectment or partition.*

It is a well known principle of law that one co-sharer cannot bring a suit for ejectment against another co-sharer His remedy is by way of a suit for partition. (*Thomas, J*) ALI RAZA KHAN *v* NAWAZISH ALI KHAN. 1938 O A. 845 = 1938 O.W.N 1157.

——*Right to recover property from trespasser—If can assert right in whole property.*

to recover the whole

a right which he is

of himself and his

e assertion of a right

property in himself. (*Thomas, J*) ALI

N *v.* NAWAZISH ALI KHAN.
1938 O A. 845 = 1938 O W.N. 1157.

COURT FEES ACT (VII OF 1870), S 8 and Sch. II, Art 17 (iv)—*Appeal against order of tribunal constituted under U P. Town Improvement Act—Court-fee payable—Provision of the Act applicable.*

The Court fee payable in respect of a memorandum

nstituted

der

The appeal will not come under Sch. II, the Act. (*Bennet, J*) DEBI DIN *v.*

COURT FEES ACT (1870) S. 8.

STATE. 1938 A.L.J. 1124 =

——**Ss. 8-C and 7 (iv)**
valuation—Duty of Court—Suit for ... of ... tions and injunction—Proper valuation

Under S. 8 C of the Court-Fees Act, it is of course competent for a Court, in fact in many cases, it is the duty of the Court, to hold an enquiry regarding the pro per valuation of the subject-matter of sui
(*iv*) of the Act in cases in which there

of declarations and an injunction against the defendant, the main purpose of which was to ensure that a certain adjustment should be maintained under which the plaintiff had agreed to pay the defendant a certain sum provided the defendant agreed not to execute certain decrees which he had obtained against the plaintiff and not to take possession of some properties which the defendant had purchased at certain execution sales. It appeared to be highly probable that the advantages ob

to pay to the defendant the sum due to him under the adjustment. The plaintiff valued the relief sought at Rs. 50.

Held, (*i*) that the valuation was as accurate as could be expected in the circumstances of
not be at the sum payable to the d
adjustment; (*ii*) that an enquiry
Court fees Act was, having regard
stated above, unnecessary. (*Edgley, J.*) GAHAR ALI SIKDAR *v.* NESAR ALI. **43 C.W.N. 167.**

——**Sch. II, Art 11**—*Applicability—Dismissal of application under S. 9 (2) and (3) of U P. Encumbered Estates Act as time barred—Order declaring that debt is to be deemed to be discharged—Appeal—Court-fee payable.*

Where an application is dismissed as being barred by time according to S. 9 (2) and (3) of the U. P. Encumbered Estates Act and an order is passed that according to S. 13 the debt should be deemed to be discharged, and an appeal is preferred against it, the Court-fee payable is not *ad valorem*, but under Art. 11, Sch. II of the Court-Fees Act. The decision of the special Judge is an order only and not an order having the force of a decree. (*Zia-ul-Hasan and Yorke, JJ.*) SUKKHU *v.* NAND BAHADUR SINGH.
1938 O.W N. 1221 = 1938 A.W.R. (C.C.) 136.

——**Sch. II, Art 17**—*Applicability—Appeal against dismissal of suit for partition of joint family property—Proper Court-fee.*

Where a suit for
dismissed on the gr
property of the def...
therefrom, the payment of Rs. 15 as court fee on the memorandum of appeal is sufficient and *ad valorem* court fee is not necessary. (*Zia ul-Hasan and Yorke, JJ.*) PARMESHUR DIN *v.* HARGOBIND PRASAD.
1938 O.W.N. 1265 = 1938 A.W.R. (C.C.) 139.

——**Sch. II, Art. 17 (iv)**—Applicability—Appeal against order of tribunal constituted under U. P. Town Improvement Act. *See* COURT-FEES ACT, S. 8 AND SCH. II, ART. 17 (*iv*). **1938 A.L.J. 1124.**

CRIM. PRO. CODE (1898), S. 197.

CRIMINAL PROCEDURE CODE (V OF 1898)

IN COUNCIL, 1902. **1938 P.W N. 869.**

——**S. 83**—*Applicability— Magistrate of Native State—Jurisdiction to issue warrant of arrest against person in British India.*

and obtain the arrest of a person in the manner directed by S. 83, Cr. P. Code. S 83 cannot apply to *the State in its relation with British India, since it is* State wholly outside British India. (*Harries, C.J. and Agarwala, J.*) HARAMOHAN PATNAIK *v.* EMPEROR.
1938 P.W.N. 869 = 19 Pat L.T. 909.

——**S. 139-A (2)**—*Jurisdiction and duty of Magistrate*

been issued, or whether the denial is only frivolous. Where the Magistrate finds that there is reliable evidence in support of the denial, he shall stay the proceedings pending the decision by a competent Civil Court

1938 A.W.R. (H C.) 841.

——**S. 162**—*Applicability—Summons case—Application by accused for copies of statements made to police—Refusal—Conviction—Sustainability—S. 537—Application of.*

S. 162, Cr. P. Code, is applicable to the trial of a summons case as well as to the trial of a warrant case, and the accused in a summons case has a statutory right to be supplied with copies of the statements made by witnesses before the police. A refusal to grant his request for such copies vitiates the trial and conviction. S. 537, Cr. P. Code, cannot be called in aid to cure the defect, as the Court in such a case is bound to assume prejudice to the accused. (*Manohar Lall and Chatterjee, JJ.*) DINANATH SAHAY *v.* EMPEROR.
17 Pat. 622.

——**S. 162**—*Police diary kept under S. 172—Right of defence to use.*

Police diaries which purport to be diaries kept under S. 172, Cr. P. Code, and which do not contain any statement by any witness, but are only brief records of what the investigating officer saw when he arrived at the spot,

EMPEROR. **68 C.L J. 397.**

——**S. 197**—*Applicability— Officiating* kulkarni—*Collection of land revenue and misappropriation—Prosecution—Sanction—Necessity — Bombay Hereditary Offices Act, S. 58.*

An officiating *kulkarni* can, under S.58 of the Bombay Hereditary Village Offices Act, be removed by the Collector only with the previous sanction of the Provincial Government, and therefore he is a public servant

CR. P. CODE (1898), S. 233.

who is not removable from his office save by or with the consent of the Local Government within the meaning of S. 197, Cr P. Code. But sanction under S. 197, Cr. P. Code, is only required for a prosecution for an offence committed while acting or purporting to act in the discharge of official duty. Where an officiating *kulkarni* collects money on account of land revenue,

40 Bom L R. 1286

——S. 233—*Cheating by payment in post dated*

forthwith on framing charge whether he wished to cross examine prosecution witnesses—Omission to give reasons—If illegality vitiating trial

Though in ordinary cases the question whether the accused desired to cross examine the prosecution witness should be put to him not soon after the charge is framed

the accused forthwith But the omission

record the reasons is not an illegality whic

whole of the proceedings thereafter It

nature of an irregularity which is curabl

injustice has been caused At best it

omission in procedure contemplated by S 537, Cr. P Code No doubt, if the Magistrate fails to ask the accused at all whether he wished to cross examine the prosecution witnesses, that would be a grave matter and might be an incurable illegality (*Harries, C J and Varma, J.*) NISAR AHMAD *v.* EMPEROR

1933 P W N 832=19 Pat.

——S 297—*Misdirection—Test—Charge as a whole*

Before one can arrive at any opinion as to whether any particular passage in the summing up amounts to a misdirection or not, one must look at and consider the summing up in its entirety (*Costello and Nasim Ali, JJ.*) EMPEROR *v.* CYRIL BERTRAM PLUCKNETT

43 C W.N 133.

the parties is in law complete as soon as it is made, and it has the effect of acquittal even though one of the parties later on resiles from the compromise. On the

CR. P. CODE (1898), S 443.

filing of a compromise petition signed by both parties in Court in respect of an offence for which no leave of the Court is required, the Magistrate is in duty bound to order an acquittal. The Magistrate has no jurisdiction to proceed further with case, nor can the complainant, by a subsequent withdrawal of the compromise petition before any order is passed on it, insist on the case being

d with. (*Manohar Lall, J*) DHARICHHAN

EMPEROR. 19 Pat L T. 840.

. 345 (2)—*Duty of Court—Compromise—acceptance by Court—Magistrate sending re- Superintendent of Police to ascertain latter's -Propriety—Proper course for ascertaining views of Crown.*

In the case of an offence compoundable with the permission of the Court, if the Magistrate in effect though

romise effected by the

to be acquitted. The

the case on the ground

d from the compromise.

Magistrate to send the

which are of a judicial

character, to the Superintendent of Police for taking his

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Magistrate holding no prima facie case made out—Evidence properly assessed—Sessions Judge holding different opinion about evidence—Order directing committal—Legality—Interference by High Court in revision.

An order of discharge passed by a Subordinate Magistrate which cannot be said to be improper, can-

has a different opinion of the evidence especially when the Sessions Judge does not specifically find that there is a *prima facie* case, and when the dispute is in substance one of a civil nature. If the Sessions Judge sets aside

case and orders a com

rfere and set aside the

(*Pandrang Row, J.*)

UPPA GOUNDAN

1938 M W N 1311.

——S 439—Miscellaneous proceedings—Magistrate acting under Naik Girls' Protection Act—Interference by High Court *See* NAIK GIRLS' PROTECTION ACT, S 4 1938 A.L.J 1147.

——S 439—Power of High Court—Discharge by

iat prosecution witness

prima facie case made

le and ordering commit-

a facie case—Revision—

Interference *See* CR P CODE, Ss. 437 AND 439.

(1938) M.W.N. 1311.

——S 443—*Applicability of Ch XXXIII.*

CR. P. CODE (1898), S. 443.

Per *Costello, J.*—Chap. XXXIII, Cr. P. Code, was only designed to apply to cases of racial distinction where there is a real clash between a European as defined in the Code on the one side and an Indian on the other, or *vice versa.* (*Derbyshire, C.J. and Costello, J.*) EMPEROR *v.* CYRIL BERTRAM PLUCKNETT. 43 C.W.N. 120.

——S. 443—*Trial of case under Ch. XXXIII—Condition precedent.*

Per *Costello, J.*—There are two fundamental conditions precedent for the trial of case outside a presidency

provisions of the chapter. (*Derbyshire, C. J. and Costello, J.*) EMPEROR *v.* CYRIL BERTRAM PLUCKNETT. 43 C.W.N. 120

——S. 443—*Waiver of claim.*

Per *Costello, J.*—A European British subject can waive his right to be dealt with as such under the provisions of Ch. XXXIII, Cr. P. Code. (*Derbyshire C. J. and Costello, J.*) EMPEROR *v.* CYRIL BERTRAM PLUCKNETT. 43 C.W.N. 120

EMPEROR *v.* CYRIL BERTRAM PLUCKNETT. 43 C.W.N. 120

——S. 449 (1) (c)—*Application for leave to appeal—Limitation.*

and Costello, J.) EMPEROR *v* CYRIL BERTRAM PLUCKNETT. 43 C.W.N. 120

——S. 449 (1) (c)—*Leave to appeal—Grant of—Conditions.*

Per *Costello, J.*—The Court can only grant leave to appeal as laid down in S 749 (1) (*c*), Cr. P. Code, on the unique ground that the case would, if it had been tried outside a presidency town, have been triable under the provisions of Ch. XXXIII. (*Derbyshire, C.J. and Costello, J.*) EMPEROR *v* CYRIL BERTRAM PLUCKNETT.

——S 449 (1) (c)—*Right to appe... right.*

Per *Costello, J.*—The foundation ... an appeal against the verdict and sentence given at a trial in the Sessions in the High Court contrary to the normal rights of a convicted person as laid down in the Letters Patent depends primarily and fundamentally upon the status of the applicant. (*Derbyshire, C.J and Costello, J.*) EMPEROR *v.* CYRIL BERTRAM PLUCKNETT. 43 C.W.N. 120

——S. 476—*Expediency of prosecution—Enquiry as to—Duty of Court—Matters for consideration—Absence of finding that prosecution is expedient in the interests of justice—If fatal.*

A Court which orders a prosecution under S. 476, Cr. P. Code, must properly come to the conclusion that a prosecution is necessary in the interests of justice. Though the absence of such a finding is not necessarily fatal, a Court dealing with these matters must apply its mind directly to the question, and in doing so it should consider whether an attempt to use the law in aid of a private grudge is being made and whether the Court should allow itself to become the instrument of a private grudge and also what facts can be proved and whether these facts are sufficient to support the conviction. (*Rowland, J.*) BACHU SINGH *v.* TRIBENI SAH. 1938 P.W.N. 904.

——S. 476-B—*Order on appeal directing prosecution*

...rder for prosecution ... 476-B, Cr. P. Code, ... Magistrate refusing ... ode. But an appeal may be treated as a revision by the High Court and dealt with as such. (*Rowland, J.*) BACHU SINGH *v.* TRIBENI SAH. 1938 P.W.N. 904.

——S. 488—"*Maintenance*" *of children—If includes their education.*

In a civilised state a human child can not be maintained simply by providing it with clothing and food. The mere maintenance of the body is not sufficient; provision has to be made for the child's developing ... the education of ... amount of education ... country call for, ... ning of "maintenance" ... le. (*Mackney, J.*) MAUNG SHWE BA *v.* MA THEIN NYA. 1938 Rang L R 673.

——S. 489—*Change of circumstances—Advance in*

... ance in age of a child is a change of the child's circumstances within the meaning of S 489, Cr. P Code. (*MacKney, J.*) MAUNG SHWE BA *v* MA THEIN NYA. 1938 Rang L R. 673.

——S. 491—Scope—If exhaustive—Power of High Court to issue Habeas Corpus. *See* HABEAS CORPUS —HIGH COURT. (1938) M.W N. 1289 (F B).

——S. 491 (1) (b) —"Illegally or improperly detained"—Meaning of—Warrant issued by Political Agent under Ch. III of Extradition Act—Mere reference to commission of offence—No specific statement as to holding of inquiry prescribed by rules—Legality—Person arrested and detained under such warrant—Right to be set at liberty. *See* EXTRADITION ACT, CH III. 1938 M.W N 1304.

——S. 537—Scope—Non-compliance with S. 256—Omission to record reasons for asking accused immediately on framing charge whether he wished to cross-examine witness—If curable. *See* CR. P. CODE S 256.

The High Court is reluctant to interfere with an order of acquittal, but when the trial Court commits a serious irregularity in the trial, the High Court will interfere and set aside the order of acquittal. Where the trial Magistrate holds a local inquiry without any notice to the parties and utilises his observation in the course of that enquiry for coming to a finding, and on the basis of that finding suddenly alters the charge and acquits the accused under S 247, Cr P Code the order of acquittal is liable to be set aside. (*Varma, J.*) BANKIM BEHARI SEN *v.* YUSUF MIAN. 19 Pat.L T. 918.

——*Duty of prosecution—Examination of eye-witnesses—Rule as to.*

CRIMINAL TRIAL.

Though the prosecution need
nesses, irrespective of considerati
reliability, yet such of those witn
the unfolding of a narrative on
based, must of course be called by the prosecution, irrespective of the effect of their testimony for or against the case for the prosecution. (*Niyogi and Gruer, JJ.*) MUKTAWANDAS v EMPEROR. 1938 N L J. 434.

——*Evidence—Reliability—Prosecution witness found unreliable—Evidence in favour of accused, if can be relied upon by accused.*

Though a prosecution witness may have been found by a Court to be an unreliable witness, nevertheless the accused is entitled to rely on the statement of such a witness and particularly so where the circumstances support the statement. (*Rachhpal Singh and Ismâil, JJ.*) MATHURA v. EMPEROR. 1938 A W R. (H C) 849

CUSTOM (Punjab)—Dastarbandhi—*Significance.*

The ceremony of *Dastarbandhi* or placing the *Dastar* or tying it round the head of a person, is not a ceremony of selection but it is a ceremony of installation. (*Thomas, J.*) ALI RAZA KHAN v NAWAZISH ALI KHAN. 1938 O A. 845=1938 O W N 1157

DANGEROUS DRUGS ACT (II OF 1930)—*Procedure—Trial of offence under—Duty to avoid delay*

In a case under the Dangerous Drugs Act, it is essential in the interest of justice that there should be as little delay as possible in the trial (*Harries, C.J. and Varma, J.*) NISAR AHMAD v EMPEROR. 1938 P W N. 832=19 Pat.L T. 845.

——S 14 (a)—*Punishment—Deterrent sentence.*

An offence under the Dangerous Drugs Act is a most serious crime and a deterrent sentence must be imposed to stamp out such crimes (*Harries, C J. and Varma, J.*) NISAR AHMAD v EMPEROR 1938 P.W N 832=19 Pat L T 845

DECREE—*Setting aside—Suit to set aside decree on ground of fraud—Maintainability—Conditions of—Nature of fraud—False statements in pleadings and evidence—Sufficiency—Proper remedy.*

The mere making of a false allegation in a written statement even with knowledge of its falsity would not necessarily amount to a fraud on the Court, so as to render the decree in the suit liable to be set aside in a separate suit on the ground of fraud The fraud which

Courts. A decree cannot be set aside on the ground that it was obtained by perjured testimony The remedy in such cases is by way of appeal or by way of review and not a separate suit to set aside the decree (*Pandrang Row and Krishnaswami Ayyangar, JJ*) RAMANATHAN CHETTIAR v. PALANIYAPPA CHETTIAR. 48 L W 946

truth of that fact But in cases where the right of a party has already been concluded by previous judgment, that fact can be proved by the production of the judgment, since the existence of that judgment itself is relevant. (*Stone, C.J and Clarke, J*) MAROTI v JAGANNATHDAS 1938 N L J 466

——S 68, Proviso—*Construction—Words 'Indian Registration Act, 1908', if refers to the particular Act alone.*

EVIDENCE ACT (1872), S. 116.

of that particular Registration Act and not of any previous Registration Act. (*Wort, J.*) JADUNATH MITRA v. ISAR JHA. 178 I.C 198=5 B R. 65.

——S. 90—*Scope and effect of—Presumption of truth of contents of documents—If arises.*

Under S 90 of the Evidence Act, documents more than thirty years old coming from proper custody prove themselves, but there is no presumption that the contents of the documents are true. (*Beaumont, C.J. and Sen, J.*) CHANDULAL ASHARAM v. BAI KASHI. 40 Bom L.R 1262.

——Ss 101 and 102—*Allegation that transfer is in violation of S. 12 of C. P. Tenancy Act—Burden of proof*

It is on the person who asserts that a transfer is in contravention of S 12 of the C. P Tenancy Act that the burden of proving it lies, for it is his application that would fail, if no evidence at all were given. (*A L. Binney, F C.*) MANIKRAO v. RAMCHANDRA 1938 N.L J. 474.

——S 114 (c)—*Presumption under when arises—Person affixing thumb mark to bond, pleading fraud—Burden of proof*

In a suit on a bond the primary burden is on the plaintiff. He must prove execution and consideration. But once he proves, or it is admitted, that the signature or thumb mark (it does not matter which) is the defendant's, then the presumption arises and the burden shifts to the defendant. He can then either prove that he cannot be charged because of fraud, etc, or that the presumption under S 114 cannot on the facts fairly arise. If he succeeds in doing that, then the burden shifts back to the plaintiff (*Bose, J*) UDHEBAN v VITHOBA. 1938 N.L J. 459.

——S. 115—*Acquiescence*—Ultra vires *statute—How affected*

An *ultra vires* statute cannot be validated by acquiescence, but an acquiescing party may be estopped from questioning it (*Gruer and Niyogi, JJ*) MADHOO GOPAL v SECRETARY OF STATE. 1938 N L J 439.

——S 116—*Scope—Tenant let in by landlord—Subsequent sale of property by Official Receiver in in-*

Under S. 116 of the Evidence Act, a tenant cannot deny his landlord's as right to let the property to him, although the plea that the tenancy has ceased to continue or that his liability to pay the rent, either wholly or partially, has came to an end is available to him The tenant is in such a case deemed to confess his land lord's title, and the plea that the tenancy has been

has been evicted against his will or forced to attorn to a person holding title paramount he would be freed from liability A person who has purchased the property at an insolvency sale by the Official Receiver for over Rs 100, but who has not got a registered deed of sale duly executed in his favour has no title to the property and if a tenant let in by the original landlord attorns to such a purchaser that will not operate to discharge him from his liability to the original landlord or entitle him

EVIDENCE ACT (1872), S. 145.

to plead attornment to a person ha
in a suit for rent by the original l
in possession. (*Abdur Rahman, J.*)
NAIDU *v.* LAKSHMI NARASIMHA

——**Ss. 145 and 155**— *S.* 145.
Questions about oral statements made—If can be disallowed.

S. 145 of the Evidence Act must be taken as it is, uninfluenced by any consideration derived from the previous state of the law or the English law upon which it may be founded. It makes no mention of oral statements. It therefore cannot control S. 155. Hence questions with reference to statements made by one

ACT, Ss. 145 AND 155. 1938 N L J. 434

EXTRADITION ACT (XV OF 1903), S. 7—*Warrant under—Arrest of person named—Plea that arrested person was not in Native State at the time of alleged commission of offence mentioned—Sustainability as a ground for release.*

If it is proved that a prisoner arrested in British India under a warrant issued by the Political Agent in a Native State under S. 7 of the Extradition Act, in respect of an offence alleged to have been committed by him in that state, was in British India at the time at which the offence with which he is charged is said to have been committed that would be a good defence to the charge. It is not, however, relevant to the question

C. P. MATHEN. (1938) M

——**S. 7**—*Duty of Chief Presidency*
Warrant by Political Agent in Native
arrest of person in Presidency Town—Warrant not dated and not naming specific station or officer for surrender of arrested person—If illegal—Arrest and detention under such warrant—If illegal or improper

When a warrant issued by the Political Agent under
S. 7 of the Extradition Act is sent
dency Magistrate of a Presidency To
sidency Magistrate has no option
execute the warrant. He is obliged
of the person for whom the warrant
custody of such person is perfectly
The fact that there are defects in the warrant, namely, that it is not dated that the direction in it is to surrender the prisoner to the frontier Police Station in the Native State without definitely naming a specific place, or that it does indicate the officer to whom the prisoner is to be handed order, is not a matter of any importance such as to render the warrant or the arrest and detention thereunder illegal or improper, though they might be points upon which the Magistrate might make a reference and report to the Government under S. 8-A of the Extradition Act. (*Burn and Stodart, JJ.*) *In the matter of*, C. P MATHEN. (1938) M.W N. 1304.

——**Ch. III**—*Procedure under—Compliance with—Presumption of—Warrant issued by Political Agent merely stating commission of offence by person named in warrant—No specific reference to enquiry—Effect—If illegal or improper warrant—Cr. P Code, S.* 491.

The procedure before the Political Agent in cases falling under Ch. III of the Extradition Act takes the

HABEAS CORPUS.

issuing the warrants. The fact that the warrant does not state or show on the face of it that the rules framed for the procedure have been obeyed or that the warrant merely states that so and so stands charged with offences is no ground for presuming that the rules have not been duly complied with or that no enquiry as prescribed by the rules has been made. A person arrested and detained under such a warrant cannot be said to be
in the meaning of
le him to be set at
In the matte of C.
938 M.W N. 1304.
, S. 43—*Bihar and*
1) *and* (iii)—*Construction and scope—If alternative.*

The provisions of R. 112 (*c*) (5)(1) and R.112 (*c*) (5) (*iii*) are not alternative in the sense that if the provisions of sub R. 5 (*iii*) are observed it is not necessary to observe the requirements of sub-R. 5 (1) of R. 112 (*c*) of Bihar and Orissa Factory Rules framed under S. 43 of the Factories Act. The word "or" occurring between one sub-clause and another in R. 112 (*c*) cannot be interpreted in such a way as to make the sub-rules alternative. (*Varma, J.*) GURSARAN LAL *v.* EMPEROR 1938 P W.N. 903 = 19 Pat L.T 936.

——**S 71**—*Claim to exemption from liability—Burden of proof.*

Under S. 71 of the Factories Act, the person who

power does not necessarily denote any conduct on the part of the appointer amounting to fraud in the ordinarily understood meaning of the word. It only means that the power has been exercised for a purpose,

ings—Necessity. *See* DECREE—SETTING ASIDE.
48 L.W. 946.

GOVERNMENT OF INDIA ACT (1935), S. 107 (1)—"Existing India Law"—Bihar Money Lenders Act (III of 1938)—If repugnant to existing Indian law and void. *See* BIHAR MONEY LENDERS ACT, S 11. 1938 P.W.N. 913 (F B.).

HABEAS CORPUS—*High Court Jurisdiction to issue writ—English common law, whether prevalent in India—Issue of rule nisi by single Judge—Validity—Criminal Procedure Code (V of 1898 as amended) S.* 491—*Effect of—Madras High Court Rules, Appellate Side Rr. 2 and R. 2-A—Whether* ultra vires.

The High Court or any judge of the High Court cannot issue the writ of Habeas Corpus in cases covered by S. 491 of the Code of Criminal Procedure. Where a Judge of the High Court issues a *rule nisi* purporting to exercise the common law jurisdiction to issue a Writ of Habeas Corpus, his order is without jurisdiction and is

HINDU LAW—Adoption.

consequently null and void. 54 Cal. 727 approved 14 and 45 Madras 922 overruled. (1928) A. considered. Rules 2 and 2 A of the Madras Higl Appellate Side Rules are *intra vires* the Court's (*Leach C. J., Madhavan Nair, Varadachariar worth and Lakshmana Rao, JJ.*) DISTRICT MAGISTRATE, TRIVANDRUM *v.* K C. MAMMEN MAPILLAI. 1938 M W.N. 1289 (F.B.)

HINDU LAW—*Adoption—Bomb. power to adopt—How affected by the*

If a son dies before attaining fu and without leaving either a widow ed son, then the mother's power to adopt which was in abeyance during the son's lifetime revives, but the moment he hands the torch on to another, the mother can no longer retake it. Whether he has so done or not is a matter to be determined in each case, with reference to the state of affairs existing at the date of his death. The legal competency or otherwise of the person, to whom it is handed, is quite immaterial (*Bose, J.*) BAPUJI *v.* GANGARAM. 1938 N.L.J. 476

——*Custom—Kumaun—Collateral succession—Doctrine of representation—Basis of rule.*

The real basis of the Kumaun custom which modifies the rules of Mitakshara as to collat that the estate is treated as if left by family tree who has left male heirs. if a man dies sonless his brothers brothers, but as sons of the father t is reverted on the sonless man's death (*Bennet and Verma, JJ.*) GANGI SAH *v.* HARLAL SAH 1938 A.W.R. (H C.) 864 = 1938 A L J. 1177

of estate taken—If absolute estate or limited estate. See COMPROMISE—CONSTRUCTION. 48 L W. 939

——*Debts—Father's debts—Insolvency of father and son—Creditors of father—Right to priority over creditors of son.*

Where a Hindu father and his son, who is a junior member of the joint family, are adjudicated insolvents by one order in an insolvency petition, a creditor who holds a debt, free from any taint of immorality or illegality, incurred by the father as manager of the joint family cannot claim any priority in respect of his debt over the debts incurred by the son. (*Abdur Rahman, J.*) THIMMIAH *v.* OFFICIAL RECEIVER OF BELLARY 48 L W 9

——*Debts—Father's debt—Pious obligation of so If continues after death of son—Mother inheriting to —Liability to discharge debt—Mysore Hindu Women's Rights Act, S. 10 (2) (g)—Effect of.*

The pious obligation of a Hindu son to pay father's debt does not cease on the son's death, passes on to his heir who takes his share on his death. A widowed mother who takes the estate of her son on his death is not relieved of the liability to discharge the debt which her son, as his father's son, was bound under the Hindu Law during his lifetime to pay. The fact that the provisions of the Mysore Hindu Law Women's Rights Act make that property *Stridhana* in the hands of the mother does not affect her liability to pay the debt in question, as the property inherited by her from her son came to her burdened with the debt which the son had a duty to discharge. (*Shankaranarayana Rao and Abdul Ghani JJ*) JWARAMAL SANTHOPCHAND & CO. *v.* SRINIVASA RAO 43 Mys H.C.R. 566.

HINDU LAW—Widow.

Essentials

tion to be e clearly d be set apart as dedicated to that purpose. Further the donor should divest himself of the property. The question as to whether there has been such a divestiture, has to be

——Stridhan—*Woman married in unapproved form —Succession—Absence of mother, father and father's heirs—Right of husband and his heirs to succeed—Escheat to crown*

On the death of a woman who was married in an unapproved form, in the absence of her mother, father or father's heirs, her *Stridhan* property goes to her husband, who, as her *Sapinda* must be held entitled to succeed by himself or his heirs. The property does not escheat to the Crown (*Beaumont, C J and Sen, J.*) CHANDULAL ASHARAM *v.* BAI KASHI 40 Bom L R 1262.

existence of legal necessity made by her to him, the reversioner is not precluded from recovering possession of the alienated property from the alienee, who was necessity and for the sale. NDRA NATH

I L R (1938) 2 Cal 492.

——*Widow—Alienation—Consent of reversioners—*

I L R (1938) 2 Cal 492.

——*Widow—Alienation—Necessity—Proof—Recitals in deed—Value of.*

The recitals as to the existence of legal necessity in a

——*Widow — Alienation — Validity—Election or ratification by reversioners—Doctrine of*

An alienation by a Hindu widow is, no doubt, only voidable and it is open to a reversioner either to ratify it or the elect to treat it as good. But if at the time of such ratification or election he was not aware of the real facts as to legal necessity and was, therefore, not aware of his right to avoid the alienation, the principle of ratification or election is not attracted to the case. (*Nasim Ali and Henderson, JJ*) HARENDRA NATH MUKHERJI *v* HARI PADA MUKHERJI. I.L.R. (1938) ?

——*Widow—Surrender—Gift of favour of relation with consent of*

HINDU LAW—Will.

Validity—Deed of consent not registered—If invalidates surrender—Subsequent adoption by widow—Right of adopted son to challenge gift.

M, a Hindu died in 1890 leaving t *R*. *K* died first. *R* had a daughter was the son in-law of *W*. On 10 6 gift of all her husband's properties respondent. *W* who was the next rev to and approved of the gift orally at days later she executed a deed of *patra*, but it was not registered. More on 10 11-1922, *R* adopted the appella suit against the respondent and his alienees to recover the properties, impeaching the gift deed on the ground that the deed of consent not being registered could not be regarded as a valid consent.

Held, (1) that the gift was a valid make a valid surrender of her ent. husband's property in favour of the consent of the next reversioner, *W*, having been properly given, *R* ceased to have any interest in the property after the deed of gift, and the subsequent adoption of the appellant would give him no right to challenge the gift; (2) that there was no distinction in principle between an alienation by a widow of a part of her property for legal necessity and a complete surrender of her entire estate by a widow by way gift; (3) that the deed of consent did not require tration, because a mere *spes successionis* which that *W* had at the time of the gift by *R* could r validly transferred, and there was no necessity for the consent of *W* being expressed in or evidenced by a registered instrument. (*Wadia, J*) PANDURANG *v.* ISHWAR.

——*Will—Construction—Words "warrish"—Meaning of.*

The Bengali words "uttaradhica have exactly the same meaning and connotation as the English word "heir". In the legal, technical and correct sense of the word, an heir com on the death of the ancestor and n can, therefore, be the heir of a livi may, however, be sometimes use sense to mean a "heir presumptiv DAS ROY CHAUDHURY *v.* GHOSE.

INCOME-TAX ACT (XI OF 1922), S. 4 (2)—*Profits—Assessees having money-lending business in British India and outside—Foreign business taking over immovable properties in discharge of debts due to it—Value of property treated in part as capital and in part as profits—Withdrawal from foreign business and remittance to British India—If taxable.*

The assessees who were partners in a firm in foreign territory carried on the s business in British India. The foreign fi pelled to take over in satisfaction of debt immovable properties which had been security for the debts. The value of these properties were treated as representing in part the return of capital and in part profits. The assessees in the year of account remitted to British India certain amounts and they contended that the profits represented by immovable properties were not capable of remittance, and so the remittances should not be taxed as profits

Held, that the withdrawals from the foreign firm and withdra- *vase and* ITTIAR *v.*

48 L.W. 957 (F.B.).

INTERPRETATION OF STATUTES.

INDIAN (FOREIGN JURISDICTION) ORDER IN COUNCIL (1902)—*Notifications by Governor-*

vires. Both of them are *intra vires* the order of 1902. The Railway Police at Dhenkanal Garh Railway Station are bound, under the terms of these notifications, to

In the case of a warrant issued by the District Magistrate of Dhenkanal, the police at Dhenkanal Garh Railway Station have no alternative but to act upon the warrant and to arrest the person named. The arrest of a person under the warrant and the subsequent production of that person before a Magistrate at Cuttack

arrest and detention cannot, however, be justified under S 54 (1) 7th para. of the Cr. P. Code. The warrant of the District Magistrate of Dhenkanal can hardly be

ed to any belief which may be entertained by a person, a warrant issued under the Extradition Act. (*Harries,*

ing of words—Duty of Court to give effect to.

Where the words of a section in a statute are plain, the Court must give effect to them, and is not justified in depriving the words of their only proper meaning in order to give effect to some intention which the Court imputes to the Legislature from other provisions of

It is a recognised principle that where one construction of an enactment will be in accordance with the existing enactments and another construction will be repugnant to them, the Courts will, where possible, adopt that construction which avoids repugnancy. (*Rowland and Manohar Lall, JJ*) MUHAMMAD YUNUS *v.* CHAMPAMANI BIBI. 1938 P.W.N 885—19 Pat.L.T. 875.

——*Similar Acts—Questions of* ultra vires *of Act—Decisions under one Act—Relevancy in construing another Act not* in pari materia.

In constitutional cases and in all questions of *ultra vires*, the Court is not entitled to stray beyond the limits

of the matter under discussion, nor lay down any general rule of construction of the Act. It is best not to widen the discussion by considerations not necessarily involved

JHA *v.* AMAN KHAN. 1938 P W N. 913 (F B)

LAND ACQUISITION ACT (I OF 1894), S. 9—*Sufficient notice but not special notice—Effect.*

Where a person interested in the property sought to be acquired has had sufficient notice of the intended acquisition, he cannot make the absence of a special notice to him, a ground of complaint. (*Harries and Misra, JJ.*) SECRETARY OF STATE *v.* KARIM BUX 1938 A.W R (H C) 833

——**Ss. 11 and 18**—*Award—Procedure to be adopted—Compensation and apportionment—Dissatisfied claimant—Remedy.*

According to the terms of S. 11 a[illegible] sections of the Land Acquisition Act, Collector must, when he makes his account the interest of all parties, assess the total amount of compensation and apportion it as between the claimants. A series of awards in respect of the same property is not contemplated by the Act. If a person interested is not given anything by the apportionment, his remedy is to claim a reference challenging the award and not to ask for another award in his favour. (*Harries and Misra, JJ.*) [illegible] *v.* KARIM BUX

——**S. 18**—*Applicability—* [illegible] *tenant—Claim for compensati*[illegible]

LANDLORD AND TENANT—*Acquiescence or estoppel—If can make good absence of registered instrument for a settlement of tenancy.*

Where for the valid settlement of tenancy a registered deed was necessary as the property was worth more than Rs. 100, its absence cannot be made good by [illegible]quiescence or estoppel on the part of a party. [illegible] *J.*) SHIBA PRASAD SINGH *v.* CHAMRU PASI. 178 I C 862=5[illegible]

——*Permanent tenancy—Proof—Erection of pucca structures with landlord's consent.*

The fact that the tenant erected some valuable structures on the land including a pucca wall and a pucca building with the connivance or consent of the landlord, would not in itself be a sufficient ground for holding that the tenancy is a permanent one. (*Jack and Patterson, JJ*) GIRIDHARI LAL MUNDRA *v.* PURNENDU NARAYAN ROY DEB BARMA. 68 C L J. 481.

——*Relationship—Transferee from grantee under patta—Rights—If governed by patta or record of rights.*

Where a grantee under a patta transfers his interest to another, but there was no new contract or lease as between the transferee and the grantor, the relationship [illegible] the terms of [illegible] (*Wort, Ag.* [illegible] T SRINIBAS [illegible] =5 B R. 64.

[illegible] *paramount—Defence of—Proof required.*

In order to sustain a defence to a rent suit, founded upon an eviction by title paramount, two things must be proved by the defendant lessee, namely, (*i*) that he has been evicted by a third person and (*ii*) that third person had a paramount title, superior to the title of his lessor. The principle is well established that physical expulsion is not necessary; it would be sufficient if the tenant under threat of dispossession from a third person attorns to him and so converts his possession into possession of the latter The mere assertion, even if this be a true assertion, by the third person that he has better title to [illegible] possession or should be taken in the eye of law to have taken possession of the demised premises. ' (*Mitter and Edgley, JJ.*) AMRITA LAL OJHA *v.* UTTAM LAL SARKAR. I L R. (1938) 2 Cal. 559.

LETTERS PATENT (Calcutta), Cl. 41—*Certificate under—Grant of—Conditions.*

[illegible] criminal matters [illegible] to His Majesty in [illegible] nt the application, [illegible] to the conclusion [illegible] xceptional circum-

[illegible] *Quaere.* [illegible] way controls the operation of S. 48, C. P. Code, and whether it applies so as to extend the period prescribed by S 48, C. P. Code? (*Broomfield and Norman, JJ*) RANGO RAMACHARYA *v.* GOPAL NARAYAN. 40 Bom.L R 1278.

[illegible] particular Tahsil, a very small portion of property in that Tahsil is included in the sale while the major portion of the property covered by the sale is situated in a different Tahsil, where the vendees did neither apply for mutation, nor care to obtain possession for a year after the date of sale and where further the witnesses to the sale were neither residents of the locali[illegible] the property was situated, nor were they of t[illegible] the vendees resided, the circumstances [illegible] to lead to the inference [illegible] ver [illegible] dulent concealment [illegible] sale [illegible] entitled to pre-empt

LIMITATION ACT (1908). S. 22.

himself of the benefit of S. 18 of the Limitation Act and more than one ... not on that ... DISH ... (H

——S. 22 (1)—Applicability—Claim to property—Order allowing—Subsequent transfer by claimant—Suit to set aside claim order—Joinder of transferee from claimant after period of limitation—Effect on suit. *See* C. P. CODE, O. 21, R. 63. **17 Pat. 588.**

——Art. 120—Applicability—Bombay Hereditary Offices Act, S. 36, proviso (3)—Suit under—Prayer for declaration of right as nearest heir of deceased watan—Limitation. *See* BOMBAY HEREDITARY OFFICES ACT, S. 36, PROVISO (3).

——Art. 144—*Alienation by* ... *alienated property—Limitation—*

In the case of an alienation of ... shebait, the period of limitatior ... that property will run not from ... but from the date of death of ... (*Jack, J.*) CHARU CHANDRA *v.* SM. NEPAN BALA. **43 C.W.N. 102.**

——Art. 182 (5)—"*In accordance with law*"—*Hindu* ...

... *ance with law and steps-in aid.*

An execution petition presented by a decree-holder prayed for arrest of the 1st defendant, who was a Hindu father after issue of notice to the defendants, the other defendants being the minor sons of the 1st defendant. The 1st defendant was then an undischarged insolvent and the decree holder had not obtained leave from the Insolvency Court to file the execution application. After the father was discharged the decree-holder again applied to execute the decree by arrest of the 1st defendant.

——Art. 182(5)— ... *fer for execution to another Court—Application to transferor Court to recall execution—If saves limitation.*

A Court which transfers a decree to another Court for execution does not thereby altogether lose control over the decree, but has still got certain powers including the power to recall the execution proceedings from the transferee Court. An application made to the transferor Court to recall the proceedings from the transferee Court is therefore one made to a "proper Court," and is a step-in-aid of execution which saves limitation under Art.

MADRAS ESTATES LAND ACT (1908), S. 26.

182 (5) of the Limitation Act. (*Fazl Ali and Agarwala, JJ.*) DWARKADAS GOBINDRAM *v.* SALIGRAM. **17 Pat 617.**

RULES OF PRACTICE, ... *complaint—Complaint—If* ... *nesses.*

R. 384 of the Criminal Rules of Practice requires a magistrate to pay the expenses of all the witnesses to be summoned, though the complaint is a private complaint. The magistrate cannot require the complainant to pay batta for witnesses on the ground that it is a private complaint. (*Lakshmana Rao, J.*) YOGAMBAMMA, *In re.* **48 L.W. 969.**

MADRAS ESTATES LAND ACT (I OF 1908) S. 3 (2) (d)—*Estate—Inam village—Inamdar—If owner of both warams—Presumption—Onus of proof—Tanjore Palace Estate—Village comprised in—If "estate."*

... is an order ... the tenant ... amdar who ... the origin ... endant was ... out a case ... t establish ... nd that the defendant was let in under a terminable tenancy. A covenant in the muchilka executed by the tenant undertaking to surrender possession on three months' notice ... tenant ... ges com- ... Estate' ... 2) of the ... *and Venkataramana Rao, JJ.*) JAGANNATHA PILLAI *v.* RAMANATHAN CHETTIAR. **1938 M.W.N. 1284.**

——Ss. 5 and 125—*Scope and effect—Sale by Collector for arrears of rent pending suit on mortgage of holding—If affected by* lis pendens—*Transfer of Property Act, S. 52.*

A sale of a holding by a Collector for arrears of rent due to the landholder after the passing of a preliminary decree and before the final decree for sale in a suit or a mortgage of the holding is not affected by *lis* ... irtue of Ss 5 and ... The sale by the ... nd on which those ... not affected by a ... the ryot who is in ... WAMI CHETTIAR **48 L.W. 927.**

... of rent is not the voluntary act of the landholder, it becomes the act of the Court. (*Wadsworth, J.*) SESHAYYA RAO *v.* ARUNDHATAMMA. **48 L.W. 949 = 1938 M W N. 1279.**

——S. 26 (3)—*Applicability—If confined to original grants.*

S. 26 (3) of the Madras Estates Land Act is not confined to original grants of land, but applies also to a grant at a reduced rate of land already in the possession of a ryot. (*Wadsworth, J.*) SESHAYYA RAO *v.* ARUNDHATAMMA, **48 L.W. 949 = 1938 M.W.N. 1279.**

MADRAS HIGH COURT RULES (ORIGINAL SIDE), O. 7, R. 7 (2)—*Applicability—Suit on promissory-note and on basis of account—Leave to defend—Right of defendant to grant of without security.*

A suit based on a promissory note is within O 7 of the Original Side Rules, but a suit for an account does not come within that order. In a suit to recover from the defendant a sum of money on the basis of a promissory note executed by him and also on the basis of an account, the defendant pleaded, *inter alia*, that the promissory note was executed under duress, and that the consideration for the promissory was unlawful as being opposed to public policy

Held, that the defendant was entitled to defend the suit without security being required of him, and that he should be granted unconditional leave to defend (*Leach, C. J. and Madhavan Nair, J.*) VENKATARANGAM NAIDU *v.* JAGANNADHADAS. 1938 M.W N. 1288.

——(Appellate side) Rr 2and 2-A—Scope—If *ultra vires*. *See* HABEAS CORPUS—HIGH COURT. 1938 M.W.N 1289 (F.B).

MAHOMEDAN LAW—*Waqf—Creation of—Evidence—Plea of undue influence—Onus.*

Where a document creating a waqf executed by a

MAHBUB SINGH *v.* ABDUL AZIZ KHAN 1938 A.W.R. (P C.) 206 = 1938 O.W.N. 1216 = 1938 O.L.R. 490 = 178 I.C. 386 (P.C).

——*Wakf—Validity—Wakf in respect of undivided property.*

property, whether naturally divisible or not, for use as a mosque c- this it land is d to build tion and invalid. a differer another p mosque, tioned aforesaid. The doctrine of *musha* has always been held to be unadapted to a progre and an exception based on such within the strictest limits. (A AYUB ALI *v.* AMIR KHAN.

——*Will—Powe Validity—Denial*

The power of a power. Such a del Law in marriage, ir recognition shows tl contrary to Mahom appoint an heir u Such a power wo public convenience, is mischievous, or is against the general principles of Mahomedan Law to allow the exercise of such a power (*Thomas, J.*) ALI RAZA

MYS H. WOMEN'S RIGHTS ACT (1933), S. 8.

—Order for restitution consequent on setting aside of execution sale—Appealability—Second appeal.

An order for restitution following the setting aside of an execution sale is an order passed under S 151, C P. Code, and is not appealable S. 144 does not apply to the case, the operation of S. 144 is expressly directed to cases "Where and in so far as a *decree* is varied or reversed." If the order is wrongly treated as one under S. 144 and an appeal entertained by the appellate Court, the High Court has jurisdiction to entertain a second appeal on the ground and set aside the order of the lower appellate Court. (*Shankaranarayana Rao and Abdul Ghani, JJ*) LOKAPALIAH *v.* CHANNAPPIAH 16 Mys L J 553 = 43 Mys H C.R. 523.

——S 151—Applicability—Restitution—Execution sale—Setting aside—Order of restitution consequent on—If falls under S. 151—Appeal *See* MYSORE C. P. CODE, SS. 144 AND 151. 43 Mys.H.C R. 523.

——S. 151—*Inherent powers—Restitution—Power to award mesne profits.*

In ordering restitution under its inherent powers, a Court has power to go into the question of mesne profits and award mesne profits, a separate suit for such profits

PPIAH.
ys H C.R. 523.
ifarious suit—

d not be multifarious, *i.e.*, they should not be concerned with different

A plaintiff who wants to prosecute a multi- suit has to show that he comes within the language of R. 3 of O 1, which lays down two conditions (1) the suit must be for reliefs in respect of or

Singaravelu Mudaliar, JJ.) VAGGAPPA *v.* DODDAVELLAPPA. 16 Mys.L J. 561 = 43 Mys H.C.R. 542.

GHTS ACT

Rights Act is also to person re governed by

after Act—Right of plaintiff's mother to share at such partition—Retrospective operation.

PROV. S. C. C. ACT (1887), Sch. II, Art. 41.

Art. 41 of Sch. II to the Provincial Small Cause Courts Act applies to such a suit and as such it could not be entertained in that Court. In such a case the position of the parties as co judgment debtors liable for costs cannot be divorced from their position as co-sharers which resulted in this liability. (*Gruer, J.*) JAGANNATH *v.* SURAJMAL. 1938 N.L.J. 457.

——**Sch. II, Art. 41**—*Co sharer tenant setting aside rent sale by deposit under S. 174, B. T. Act—Suit by him against other co sharers for their proportionate share—If one for contribution.*

A suit by a co-sharer tenant, who has set aside a rent sale by making a deposit under S. 174 of the B. T. Act, for recovery from the other co sharer tenants sums of money proportionate to their shares, is not a suit for re imbursement but one for contribution falling under Art. 41, Sch. II of the Provincial Small Cause Courts Act. (*Mitter, J.*) RANJAN KUMAR *v* BASANTA KUMAR. 43 C.W.N. 99.

PUNJAB DEBTORS' PROTECTION ACT (II OF 1936), S. 5—*Application of—Insolvents.*

S. 5 of the Debtors Protection Act affords protection to judgment-debtors "in execution of decrees," and does not, therefore, apply to persons who have been adjudicated insolvents (*Tek Chand, J.*) LABHU MA BANARSI DASS *v.* MST. BIBI. 40 P.L.R. 1057.

REGISTRATION ACT (XVI OF 1908), S 47—*Scope of—Priority—Compromise decree creating a charge—Same property mortgaged before registration of decree.*

S. 47 of the Registration Act refers to a registered document and its operation from the date on which it would have operated, if no registration had been requir-

——**S. 87**—*Scope of.*

The operation of S. 87 of the Registration Act does not extend to those cases in which an application for registration is made out of time. (*Wort, Ag C.J. and Manohar Lall, J.*) RAMPRATAP SRINARAYAN *v.* DARSAN RAM. 178 I.C. 505 = 5 B R. 110.

REVENUE RECORDS—*Settlement records—Entries in—If can be altered by private partition.*

There is no justification to depart f
in the settlement of 1926, merely on
private partition. The right to the
in a grove should be settled in a Civ
sary, and the fruits to be enjoyed acc
Land Records do not record control c

in deed of assignment—Right of parties—Right of assignee to recover more than amount of valuation in assignment deed.

S. 26 of the Stamp Act only applies to cases where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be ascertained at the date of its execution. It does not apply to the case of an assignment by way of gift in which an estimated value is given of the interest assigned. The parties to an assignment of a debt are under

T. P. ACT (1882), S. 55.

no compulsion to value it at the entire amount due. There is nothing in the Act to limit the right of the parties to value a chose in action at any amount they may think fit or to penalise them for doing so. The fact that a certain value is given in the assignment deed does not preclude the assignee from recovering or claiming more than that amount from the debtor. (*Rowland and Manohar Lall, JJ.*) MUHAMMAD YUNUS *v.* CHAMPAMANI BIBI. 1938 P W.N. 885 = 19 Pat L T. 875.

SUCCESSION ACT (XXXIX OF 1925), S. 228—*"Proved"—Meaning of.*

The word "proved" as used in S. 228 of the Succession Act was not necessarily intended to be the equivalent of "admitted to probate", but to mean authoritatively established as being valid according to the law of the place where it was made. (*Costello and Biswas, JJ.*) SUKUMAR BANERJI *v.* RAJESHWARI DEBI. I.L.R. (1938) 2 Cal. 507.

TRANSFER OF PROPERTY ACT (IV OF 1882), S. 52—Applicability—Mortgage of holding by ryot—Suit on—Preliminary decree—Subsequent sale of holding by Collector for arrears of rent under Madras Estates Land Act—If affected by *lis pendens*. *See* MADRAS ESTATES LAND ACT, SS. 5 AND 125. 48 L.W. 927.

——**S. 53**—Applicability—Suit by decree-holder under O. 21, R. 63, C. P. Code—Frame of. *See* C. P. CODE, O. 21, R. 63. 17 Pat 588.

——**S. 54**—*Applicability—Sale in insolvency by Official Receiver—Purchaser not getting registered deed of sale—Title of.*

A sale by an Official Receiver in insolvency is a pri-
ider the orders of a Court
te on which the auction is
applies to such a sale and
e property is Rs. 100 or
a registered sale deed.
fected by an agreement,
e English equitable doc-
real property makes the
of the estate is inapplic-
able to the sale of real estate in India in view of S. 54 of the T. P. Act (*Abdur Rahman, J.*) NARAYANASWAMY NAIDU *v.* LAKSHMI NARASIMHA RAO 48 L.W. 959.

——**S 55 (2)**—*Nature of covenant implied under—Vendor having neither title to nor power to transfer a portion of area sold—Vendee not getting possession—His remedy.*

The contract set out in S. 55 (2) of the T. P.

breach of the im-
over a case where
area in question.
NARAIN *v.* HAR
SWARUP. 1938 A.L J 1136 = 1938 A.W.R. (H C.) 803.

——**(as amended in 1928), Ss. 59 and 100**—*Scope and effect of—Limited company—Debenture issued by—Loan on security of specified immovable property—Registration—Necessity.*

A debenture issued by a Limited company, the loan under it being stated to be on the security of specified immovable property, requires registration under S. 100 of the Transfer of Property Act read with S. 59 of the Act

T. P. ACT (1882) S. 82.

as amended in 1929, even when the amount of the loan is less than Rs. 100. If the debenture is not registered, the holder of a debenture cannot be regarded as a secured creditor, although the debenture has been registered with Registrar of joint stock companies. (*Leach, C. J. and Madhavan Nair, J.*) VISWANADHAN *v.* M. S. MENON. (1938) **M.W.N. 1286 = 48 L.W. 952.**

——**S. 82**—*Contribution—Right to—Two mortgages in favour of same person—Later mortgage including extra item of property—Decree on later mortgage—Sale subject to earlier mortgage—Mortgagee purchasing all items except one purchased by third party—Effect—Contribution for proportionate amount—Value of properties—Ascertainment—Material date.*

Where there were two mortgages in favour [illegible] same person and the later one included an extra item of property and the mortgagee obtains a decree on the [illegible] against the third party in respect of the proportionate amount payable by him. The effect of the purchase is to break up the integrity of the mortgage, and a portion of debt which bears the same ratio to the whole amount of the debt as the value of the property purchas [illegible]

[illegible] *with insufficient court fee—Deposit of mortgage amount after return of plaint and before representation with full court fee—Validity of—Plaintiff aware of deposit when representi* [illegible]

A deposit under S. 83 of the T [illegible] Act after a suit on the mortgage [illegible] with an insufficient court-fee and [illegible] been represented with sufficient co [illegible] and valid deposit. When once the [illegible] tuted, the amount due on the mortg [illegible] tained until the decree is passed, [illegible] interests, etc. The fact that the pl [illegible] ridiculously inadequate court-fee a [illegible]

48 L.W. 929.

——**S. 106**—*Monthly tenancy—Notice to quit—Validity.*

The validity of a notice to quit ought not to be determined on the splitting of a straw. A notice served on a monthly tenant in Kartic 1337 requiring him to vacate the land on the 1st of Pous 1337 is valid, although it does not require the tenant to vacate the land with the expiry of the month of Agrahayan. (*R C. Mitter, J.*) [illegible]

[illegible] makes it quite clear to him that the landlord intends to

U P. TOWN IMPROVEMENTS ACT (1919).

take possession of the whole of the *jama* the notice is valid although it contains an inaccurate description of the land. (*Jack and Patterson, JJ*) GIRIDHARI LAL MANDRA *v.* PURNENDU NARAYAN ROY DEB BARMA. **68 C L J. 481**

——**Ss 122 and 123**—*"Voluntarily"—Meaning of—Exercise of power of appointment—Registered instrument, if necessary*

The word "voluntarily" in S 122 of the T P Act bears its ordinary popular meaning, denoting the exercise of an unfettered freewill and not its technical meaning of "without consideration" The donee of a mere special power of appointment, in exercising that [illegible] oluntarily", as he [illegible] to appoint with- [illegible] The appointment, though it may be a "transfer", does not amount to a [illegible] by a registered [illegible] *v* U ARESEINNA. [illegible] **8 Rang L R. 678.**

[illegible] **ACT (XXV OF** [illegible] *of a miscellaneous mafi plot in the City of Lucknow, if one*

As regards a definition of who is a landlord, the emphasis is on a mahal so far as the proprietorship of a specific share is concerned; otherwise there is a reference to the proprietorship of specific plots. The holder of [illegible]

[illegible] clerk, the parentage of certain grandchildren, parties to the application under S. 4 of the Encumbered Estates [illegible]

[illegible] h the mandatory provi- [illegible] 4. When it is too late to [illegible] to be rejected. If an order has been already passed under S. 6 the Board would cancel it under its powers under S. 46. (*Darling, S.M. and Mehta, J.M*) JOTI PRASAD *v.* KHAZAN. **1938 O.W.N. 1214 = 1938 R.D. 923.**

——**Ss. 9 (2), (3) and 13**—Dismissal of application as time barred under S 9 (2) and (3)—Order declaring that debt is to be deemed to be discharged—Appeal—Court fee payable. *See* COURT FEES ACT, SCH. II, ART. 11—APPLICABILITY.

[illegible] **136.** [illegible] to be [illegible] time [illegible] t-fee [illegible] 11—

[illegible] 1919)—Appeal against order of Tribunal

under the Act—Court-fee payable. *See* COURT-FEES ACT, S. 8 AND SCH. II, ART. 17 (*iv*).
1938 A.L.J. 1124.

——S. 64—*President and assessors—Relative posi-*
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further evidence on the matter, there is a dis-agreement between the members. Though the chair man is to regulate the procedure he could at best have ruled that no f admitted and called upon the pensation. But where he has ed straightaway to fix the con decision cannot be sustaine *JJ.*) SECRETARY OF STATE

WILL—*Construction—Absolute estate—Gift over void*

——*Construction—Avoidance of intestacy.*

One of the golden rules of interpretation of wills is, if it is possible, to so construe a will as to avoid intestacy. It does not mean that a Court is entitled to misconstrue s a possible and should adopt it. NAWAZISH ALI 38 O.W.N. 1157.

fficiently clear—

intention of the of construction ncies of language *J.*) ALI RAZA
1938 O.A. 845 = 1938 O.W.N. 1157.

——*Construction—Principles—Intention of testator.*

o be observed in intention of the unambiguous dis- d or qualified by he second is that gal import must testator uses in- ent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense. (*Sen, J.*) GURUDAS ROY CHAUDHURY *v.* BHUPENDRA NATH GHOSE.
43 C.W.N. 141

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